

48-3a-101. Title.

This chapter may be cited as the "Utah Revised Uniform Limited Liability Company Act."

Enacted by Chapter 412, 2013 General Session

48-3a-102. Definitions.

As used in this chapter:

(1) "Certificate of organization" means the certificate required by Section 48-3a-201. The term includes the certificate as amended or restated.

(2) "Contribution," except in the phrase "right of contribution," means property or a benefit described in Section 48-3a-402, which is provided by a person to a limited liability company to become a member or in the person's capacity as a member.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under federal, state, or foreign law governing insolvency.

(4) "Distribution" means a transfer of money or other property from a limited liability company to a person on account of a transferable interest or in the person's capacity as a member. The term:

(a) includes:

(i) a redemption or other purchase by a limited liability company of a transferable interest; and

(ii) a transfer to a member in return for the member's relinquishment of any right to participate as a member in the management or conduct of the company's activities and affairs or to have access to records or other information concerning the company's activities and affairs; and

(b) does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

(5) "Division" means the Division of Corporations and Commercial Code.

(6) "Foreign limited liability company" means an unincorporated entity formed under the law of a jurisdiction other than this state, which would be a limited liability company, including a low-profit limited liability company, if formed under the law of this state.

(7) "Governing person" means a person, alone or in concert with others, by or under whose authority the powers of the limited liability company are exercised and under whose direction the activities and affairs of the limited liability company are managed pursuant to this chapter and the limited liability company's operating agreement. The term includes:

(a) a manager of a manager-managed limited liability company;

(b) a member of a member-managed limited liability company; and

(c) the chief executive officer of a limited liability company in which officers have been appointed, regardless of the actual designated title.

(8) "Jurisdiction," used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

- (9) "Jurisdiction of formation" means, with respect to an entity, the jurisdiction:
- (a) under whose law the entity is formed; or
 - (b) in the case of a limited liability partnership or foreign limited liability partnership, in which the partnership's statement of qualification is filed.
- (10) "Limited liability company," except in the phrase "foreign limited liability company," means an entity formed under this chapter or which becomes subject to this chapter under Part 10, Merger, Interest Exchange, Conversion, and Domestication, or Section 48-3a-1405.
- (11) "Low-profit limited liability company" means a limited liability company meeting the requirements of Part 13, Low-Profit Limited Liability Companies.
- (12) "Manager" means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in Subsection 48-3a-407(3).
- (13) "Manager-managed limited liability company" means a limited liability company that qualifies under Subsection 48-3a-407(1).
- (14) "Member" means a person that:
- (a) has become a member of a limited liability company under Section 48-3a-401 or was a member in a company when the company became subject to this chapter under Section 48-3a-1405; and
 - (b) has not dissociated under Section 48-3a-602.
- (15) "Member-managed limited liability company" means a limited liability company that is not a manager-managed limited liability company.
- (16) "Operating agreement" means the agreement, whether or not referred to as an operating agreement and whether oral, implied, in a record, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in Subsection 48-3a-112(1). The term includes the agreement as amended or restated.
- (17) "Organizer" means a person that acts under Section 48-3a-201 to form a limited liability company.
- (18) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (19) "Principal office" means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.
- (20) "Professional services company" means a limited liability company organized in accordance with Part 11, Professional Services Companies.
- (21) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.
- (22) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (23) "Registered agent" means an agent of a limited liability company or foreign

limited liability company which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the company.

(24) "Registered foreign limited liability company" means a foreign limited liability company that is registered to do business in this state pursuant to a statement of registration filed by the division.

(25) "Series" means a series created in accordance with Part 12, Series Limited Liability Companies.

(26) "Sign" means, with present intent to authenticate or adopt a record:

- (a) to execute or adopt a tangible symbol; or
- (b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(27) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(28) "Transfer" includes:

- (a) an assignment;
- (b) a conveyance;
- (c) a sale;
- (d) a lease;
- (e) an encumbrance, including a mortgage or security interest;
- (f) a gift; and
- (g) a transfer by operation of law.

(29) "Transferable interest" means the right, as initially owned by a person in the person's capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right. The term applies to any fraction of the interest by whomever owned.

(30) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member. The term includes a person that owns a transferable interest under Subsection 48-3a-603(1)(c).

(31) "Tribal limited liability company" means a limited liability company that is:

- (a) formed under the law of a tribe; and
- (b) at least 51% owned or controlled by the tribe under whose law the limited liability company is formed.

(32) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.

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48-3a-103. Knowledge -- Notice.

(1) A person knows a fact if the person:

- (a) has actual knowledge of it; or
- (b) is deemed to know it under Subsection (4)(a) or law other than this chapter.

(2) A person has notice of a fact if the person:

- (a) has reason to know the fact from all the facts known to the person at the time in question; or
- (b) is deemed to have notice of the fact under Subsection (4)(b).
- (3) Subject to Subsection 48-3a-209(6), a person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.
- (4) A person not a member is deemed:
 - (a) to know of a limitation on authority to transfer real property as provided in Subsection 48-3a-302(7); and
 - (b) to have notice of a limited liability company's:
 - (i) dissolution 90 days after a statement of dissolution under Subsection 48-3a-703(2)(b)(i) becomes effective;
 - (ii) termination 90 days after a statement of termination under Subsection 48-3a-703(2)(b)(vi) becomes effective;
 - (iii) participation in a merger, interest exchange, conversion, or domestication 90 days after a statement of merger, interest exchange, conversion, or domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, becomes effective; and
 - (iv) abandonment of a merger, interest exchange, conversion, or domestication 90 days after a statement of abandonment of merger, interest exchange, conversion, or domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, becomes effective.

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48-3a-104. Nature, purpose, and duration of limited liability company.

- (1) A limited liability company is an entity distinct from its member or members.
- (2) A limited liability company may have any lawful purpose, regardless of whether for profit.
- (3) A limited liability company has perpetual duration.

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48-3a-105. Powers.

A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities and affairs.

Enacted by Chapter 412, 2013 General Session

48-3a-106. Governing law.

The law of this state governs:

- (1) the internal affairs of a limited liability company; and
- (2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.

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48-3a-107. Supplemental principles of law.

Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

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48-3a-108. Permitted names.

(1) Except as provided in Section 48-3a-1104 or 48-3a-1302, the name of a limited liability company must contain the words "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", or "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co.".

(2) Except as otherwise provided in Subsection (4), the name of a limited liability company, and the name under which a foreign limited liability company may register to do business in this state, must be distinguishable on the records of the division from:

- (a) the name of an existing person whose formation required the filing of a record by the division;
- (b) the name of a limited liability partnership;
- (c) the name of a person registered to do business in this state by the filing of a record by the division;
- (d) each name reserved under Section 48-3a-109 or other law of this state providing for the reservation of a name by the filing of a record by the division;
- (e) each name registered under Section 48-3a-110 or other law of this state providing for the registration of a name by the filing of a record by the division; and
- (f) an assumed name registered under Title 42, Chapter 2, Conducting Business Under Assumed Name.

(3) If a person consents in a record to the use of its name and submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable on the records of the division from any name in any category of names in Subsection (2), the name of the consenting person may be used by the person to which the consent was given.

(4) Except as otherwise provided in Subsection (5), in determining whether a name is the same as or not distinguishable on the records of the division from the name of another entity, words, phrases, or abbreviations indicating the type of entity, such as "corporation", "corp.", "incorporated", "Inc.", "professional corporation", "PC", "P.C.", "professional association", "PA", "P.A.", "Limited", "Ltd.", "limited partnership", "LP", "L.P.", "limited liability partnership", "LLP", "L.L.P.", "registered limited liability partnership", "RLLP", "R.L.L.P.", "limited liability limited partnership", "LLLLP", "L.L.L.L.P.", "registered limited liability limited partnership", "RLLLLP", "R.L.L.L.P.", "limited liability company", "LLC", "L.L.C.", "professional limited liability company", "PLLC", or "P.L.L.C.", may not be taken into account.

(5) A person may consent in a record to the use of a name that is not distinguishable on the records of the division from its name except for the addition of a word, phrase, or abbreviation indicating the type of person as provided in Subsection (4). In such a case, the person need not change its name pursuant to Subsection (2).

(6) The division may not approve for filing a name that implies that a limited liability company is an agency of this state or any of its political subdivisions, if it is not actually such a legally established agency or subdivision.

(7) The authorization to file a certificate under or to reserve or register a limited liability company name as granted by the division does not:

(a) abrogate or limit the law governing unfair competition or unfair trade practices;

(b) derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or

(c) create an exclusive right in geographic or generic terms contained within a name.

(8) The name of a limited liability company or foreign limited liability company may not contain:

(a) the words:

(i) "association";

(ii) "corporation";

(iii) "incorporated";

(iv) "partnership"; or

(v) "limited partnership";

(b) any word or abbreviation that is of like import to the words listed in

Subsection (8)(a);

(c) without the written consent of the United States Olympic Committee, the words:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius"; and

(d) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114 the words:

(i) "university";

(ii) "college"; or

(iii) "institute" or "institution".

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48-3a-109. Reservation of name.

(1) A person may reserve the exclusive use of a name that complies with Section 48-3a-108 by delivering an application to the division for filing. The application must state the name and address of the applicant and the name to be reserved. If the division finds that the name is available, the division shall reserve the name for the applicant's exclusive use for 120 days.

(2) The owner of a reserved name may transfer the reservation to another person by delivering to the division a signed notice in a record of the transfer, which states the name and address of the transferee.

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48-3a-110. Registration of name.

(1) A foreign limited liability company not registered to do business in this state under Part 9, Foreign Limited Liability Companies, may register its name, or an alternate name adopted pursuant to Section 48-3a-906, if the name is distinguishable on the records of the division from the names that are not available under Section 48-3a-108.

(2) To register its name or an alternate name adopted pursuant to Section 48-3a-906, a foreign limited liability company must deliver to the division for filing an application stating the foreign limited liability company's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to Section 48-3a-906. If the division finds that the name applied for is available, the division shall register the name for the applicant's exclusive use.

(3) The registration of a name under this section is effective for one year after the date of registration.

(4) A foreign limited liability company whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than three months before the expiration of the registration, to the division for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding one-year period.

(5) A foreign limited liability company whose name registration is effective may register as a foreign limited liability company under the registered name or consent in a signed record to the use of that name by another person that is not an individual.

Enacted by Chapter 412, 2013 General Session

48-3a-111. Registered agent.

(1) Each limited liability company and each registered foreign limited liability company shall designate in accordance with Subsection 16-17-203(1) and maintain a registered agent in this state.

(2) A limited liability company or registered foreign limited liability company may change its registered agent or the address of its registered agent by filing with the division a statement of change in accordance with Section 16-17-206.

Enacted by Chapter 412, 2013 General Session

48-3a-112. Operating agreement -- Scope, functions, and limitations.

(1) Except as otherwise provided in Subsections (3) and (4), the operating agreement governs:

(a) relations among the members as members and between the members and the limited liability company;

(b) the rights and duties under this chapter of a person in the capacity of manager;

(c) the activities and affairs of the limited liability company and the conduct of those activities and affairs; and

(d) the means and conditions for amending the operating agreement.

(2) To the extent the operating agreement does not provide for a matter

described in Subsection (1), this chapter governs the matter.

(3) An operating agreement may not:

(a) vary a limited liability company's capacity under Section 48-3a-105 to sue and be sued in its own name;

(b) vary the law applicable under Section 48-3a-106;

(c) vary any requirement, procedure, or other provision of this chapter pertaining to:

(i) registered agents; or

(ii) the division, including provisions pertaining to records authorized or required to be delivered to the division for filing under this chapter;

(d) vary the provisions of Section 48-3a-204;

(e) eliminate the duty of loyalty or the duty of care, except as otherwise provided in Subsection (4);

(f) eliminate the contractual obligation of good faith and fair dealing under Subsection 48-3a-409(4), but the operating agreement may prescribe the standards, if not unconscionable or against public policy, by which the performance of the obligation is to be measured;

(g) relieve or exonerate a person from liability for conduct involving bad faith, willful misconduct, or recklessness;

(h) unreasonably restrict the duties and rights under Section 48-3a-410, but the operating agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(i) vary the causes of dissolution specified in Subsections 48-3a-701(4)(a) and (5);

(j) vary the requirement to wind up the limited liability company's activities and affairs as specified in Subsections 48-3a-703(1), (2)(a), and (5);

(k) unreasonably restrict the right of a member to maintain an action under Part 8, Action By Members;

(l) vary the provisions of Section 48-3a-805, but the operating agreement may provide that the limited liability company may not have a special litigation committee;

(m) vary the right of a member to approve a merger, interest exchange, conversion, or domestication under Subsections 48-3a-1023(1)(b), 48-3a-1033(1)(b), 48-3a-1043(1)(b), or 48-3a-1053(1)(b); or

(n) except as otherwise provided in Section 48-3a-113 and Subsection 48-3a-114(2), restrict the rights under this chapter of a person other than a member or manager.

(4) Subject to Subsection (3)(g), without limiting other terms that may be included in an operating agreement, the following rules apply:

(a) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this chapter and imposes the responsibility on one or more other

members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

(c) If not unconscionable or against public policy, the operating agreement may:

(i) alter or eliminate the aspects of the duty of loyalty stated in Subsections 48-3a-409(2) and (9);

(ii) identify specific types or categories of activities that do not violate the duty of loyalty;

(iii) alter the duty of care, but may not authorize intentional misconduct or knowing violation of law; and

(iv) alter or eliminate any other fiduciary duty.

(5) The court shall decide as a matter of law whether a term of an operating agreement is unconscionable or against public policy under Subsection (3)(f) or (4)(c).

The court:

(a) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(b) may invalidate the term only if, in light of the purposes, activities, and affairs of the limited liability company, it is readily apparent that:

(i) the objective of the term is unconscionable or against public policy; or

(ii) the means to achieve the term's objective is unconscionable or against public policy.

Enacted by Chapter 412, 2013 General Session

48-3a-113. Operating agreement -- Effect on limited liability company and person becoming member -- Preformation agreement.

(1) A limited liability company is bound by and may enforce the operating agreement, whether or not the limited liability company has itself manifested assent to the operating agreement.

(2) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(3) Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the limited liability company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the limited liability company the terms will become the operating agreement.

Enacted by Chapter 412, 2013 General Session

48-3a-114. Operating agreement -- Effect on third parties and relationship to records effective on behalf of limited liability company.

(1) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required

approval or satisfy the specified condition.

(2) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or a person dissociated as a member are governed by the operating agreement. Subject only to a court order issued under Subsection 48-3a-503(2)(b) to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or is dissociated as a member:

(a) is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or person dissociated as a member; and

(b) is not effective to the extent the amendment imposes a new debt, obligation, or other liability on the transferee or person dissociated as a member.

(3) If a record delivered by a limited liability company to the division for filing becomes effective and contains a provision that would be ineffective under Subsection 48-3a-112(3) or (4)(c) if contained in the operating agreement, the provision is ineffective in the record.

(4) Subject to Subsection (3), if a record delivered by a limited liability company to the division for filing becomes effective and conflicts with a provision of the operating agreement:

(a) the operating agreement prevails as to members, persons dissociated as members, transferees, and managers; and

(b) the record prevails as to other persons to the extent they reasonably rely on the record.

Enacted by Chapter 412, 2013 General Session

48-3a-115. Delivery of record.

(1) Except as otherwise provided in this chapter, permissible means of delivery of a record include delivery by hand, the United States Postal Service, a commercial delivery service, and electronic transmission.

(2) Delivery to the division is effective only when a record is received by the division.

Enacted by Chapter 412, 2013 General Session

48-3a-116. Reservation of power to amend or repeal.

The Legislature of this state has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign limited liability companies subject to this chapter are governed by the amendment or repeal.

Enacted by Chapter 412, 2013 General Session

48-3a-201. Formation of limited liability company -- Certificate of organization.

(1) One or more persons may act as organizers to form a limited liability company by delivering to the division for filing a certificate of organization.

- (2) A certificate of organization must state:
- (a) the name of the limited liability company, which must comply with Section 48-3a-108;
 - (b) the street and mailing address of the limited liability company's principal office;
 - (c) the information required by Subsection 16-17-203(1);
 - (d) if the limited liability company is a low-profit limited liability company, a statement that the limited liability company is a low-profit limited liability company;
 - (e) if the limited liability company is a professional services company, the information required by Section 48-3a-1103; and
 - (f) if the limited liability company is to have one or more series in which the liabilities of the series are to be limited as contemplated by Subsection 48-3a-1201(2), notice of the limitation on liability in accordance with Section 48-3a-1202.
- (3) A certificate of organization may contain statements as to matters other than those required by Subsection (2), but may not vary or otherwise affect the provisions specified in Subsection 48-3a-112(3) in a manner inconsistent with that section. However, a statement in a certificate of organization is not effective as a statement of authority.
- (4) A limited liability company is formed when the limited liability company's certificate of organization becomes effective and at least one person becomes a member.

Enacted by Chapter 412, 2013 General Session

48-3a-202. Amendment or restatement of certificate of organization.

- (1) A certificate of organization may be amended or restated at any time, except that in accordance with Section 48-3a-1303, a low-profit limited liability company shall amend its certificate of organization if the limited liability company ceases to be a low-profit limited liability company.
- (2) To amend its certificate of organization, a limited liability company must deliver to the division for filing an amendment stating:
- (a) the name of the limited liability company;
 - (b) the date of filing of its initial certificate of organization; and
 - (c) the changes the amendment makes to the certificate as most recently amended or restated.
- (3) To restate its certificate of organization, a limited liability company must deliver to the division for filing a restatement designated as such in its heading.
- (4) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate due to changed circumstances, the member or manager shall promptly:
- (a) cause the certificate to be amended; or
 - (b) if appropriate, deliver to the division for filing a statement of change under Section 16-17-206 or a statement of correction under Section 48-3a-208.

Enacted by Chapter 412, 2013 General Session

48-3a-203. Signing of records to be delivered for filing to division.

(1) A record delivered to the division for filing pursuant to this chapter must be signed as follows:

(a) Except as otherwise provided in Subsections (1)(b) and (c), a record signed on behalf of a limited liability company must be signed by a person authorized by the limited liability company.

(b) A limited liability company's initial certificate of organization must be signed by at least one person acting as an organizer.

(c) A record delivered on behalf of a dissolved limited liability company that has no member must be signed by the person winding up the limited liability company's activities and affairs under Subsection 48-3a-703(3) or a person appointed under Subsection 48-3a-703(4) to wind up the activities and affairs.

(d) A statement of denial by a person under Section 48-3a-303 must be signed by that person.

(e) Any other record delivered on behalf of a person to the division for filing must be signed by that person.

(2) Any record filed under this chapter may be signed by an agent. Whenever this chapter requires a particular individual to sign a record and the individual is deceased or incompetent, the record may be signed by a legal representative of the individual.

(3) A person that signs a record as an agent or legal representative thereby affirms as a fact that the person is authorized to sign the record.

Enacted by Chapter 412, 2013 General Session

48-3a-204. Signing and filing pursuant to judicial order.

(1) If a person required by this chapter to sign a record or deliver a record to the division for filing under this chapter does not do so, any other person that is aggrieved may petition the district court to order:

(a) the person to sign the record;

(b) the person to deliver the record to the division for filing; or

(c) the division to file the record unsigned.

(2) If a petitioner under Subsection (1) is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the limited liability company or foreign limited liability company a party to the action.

(3) A record filed under Subsection (1)(c) is effective without being signed.

Enacted by Chapter 412, 2013 General Session

48-3a-205. Filing requirements.

(1) To be filed by the division pursuant to this chapter, a record must be received by the division, comply with this chapter, and satisfy the following:

(a) The filing of the record must be required or permitted by this chapter.

(b) The record must be physically delivered in written form unless and to the extent the division permits electronic delivery of records.

(c) The words in the record must be in English, and numbers must be in Arabic

or Roman numerals, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.

(d) The record must be signed by a person authorized or required under this chapter to sign the record.

(e) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the record, but need not contain a seal, attestation, acknowledgment, or verification.

(2) If law other than this chapter prohibits the disclosure by the division of information contained in a record delivered to the division for filing, the division shall accept the record if the record otherwise complies with this chapter, but the division may redact the information.

(3) When a record is delivered to the division for filing, any fee required under this chapter and any fee, tax, interest, or penalty required to be paid under this chapter or law other than this chapter must be paid in a manner permitted by the division or by that law.

(4) The division may require that a record delivered in written form be accompanied by an identical or conformed copy.

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48-3a-206. Effective time and date.

Except as otherwise provided in Section 48-3a-207 and subject to Subsection 48-3a-208(3), a record filed under this chapter is effective:

(1) on the date and at the time of its filing by the division, as provided in Section 48-3a-209;

(2) on the date of filing and at the time specified in the record as its effective time, if later than the time under Subsection (1);

(3) at a specified delayed effective date and time, which may not be more than 90 days after the date of filing; or

(4) if a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

Enacted by Chapter 412, 2013 General Session

48-3a-207. Withdrawal of filed record before effectiveness.

(1) Except as otherwise provided in Sections 48-3a-1024, 48-3a-1034, 48-3a-1044, and 48-3a-1054, a record delivered to the division for filing may be withdrawn before it takes effect by delivering to the division for filing a statement of withdrawal.

(2) A statement of withdrawal must:

(a) be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons;

(b) identify the record to be withdrawn; and

(c) if signed by fewer than all the persons that signed the record being withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons that signed the record.

(3) On filing by the division of a statement of withdrawal, the action or transaction evidenced by the original record does not take effect.

Enacted by Chapter 412, 2013 General Session

48-3a-208. Correcting filed record.

(1) A person on whose behalf a filed record was delivered to the division for filing may correct the record if:

- (a) the record at the time of filing was inaccurate;
- (b) the record was defectively signed; or
- (c) the electronic transmission of the record to the division was defective.

(2) To correct a filed record, a person on whose behalf the record was delivered to the division must deliver to the division for filing a statement of correction.

(3) A statement of correction:

- (a) may not state a delayed effective date;
- (b) must be signed by the person correcting the filed record;
- (c) must identify the filed record to be corrected;
- (d) must specify the inaccuracy or defect to be corrected; and
- (e) must correct the inaccuracy or defect.

(4) A statement of correction is effective as of the effective date of the filed record that it corrects except for purposes of Subsection 48-3a-103(4) and as to persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

Enacted by Chapter 412, 2013 General Session

48-3a-209. Duty of division to file -- Review of refusal to file -- Transmission of information by division.

(1) The division shall file a record delivered to the division for filing which satisfies this chapter. The duty of the division under this section is ministerial.

(2) When the division files a record, the division shall record it as filed on the date and at the time of its delivery. After filing a record, the division shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing and, in the case of a statement of denial, also to the limited liability company to which the statement pertains.

(3) If the division refuses to file a record, the division shall, not later than 15 business days after the record is delivered:

- (a) return the record or notify the person that submitted the record of the refusal; and
- (b) provide a brief explanation in a record of the reason for the refusal.

(4) If the division refuses to file a record, the person that submitted the record may petition the district court to compel filing of the record. The record and the explanation of the division of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(5) The filing of or refusal to file a record does not create a presumption that the

information contained in the record is correct or incorrect.

(6) Except as otherwise provided by Section 16-17-301 or by law other than this chapter, the division may deliver any record to a person by delivering it:

- (a) in person to the person that submitted it;
- (b) to the address of the person's registered agent;
- (c) to the principal office of the person; or
- (d) to another address the person provides to the division for delivery.

Enacted by Chapter 412, 2013 General Session

48-3a-210. Liability for inaccurate information in filed record.

(1) If a record delivered to the division for filing under this chapter and filed by the division contains inaccurate information, a person that suffers loss by reliance on the information may recover damages for the loss from:

(a) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(b) subject to Subsection (2), a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:

(i) the record was delivered for filing on behalf of the limited liability company; and

(ii) the member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

(A) effected an amendment under Section 48-3a-202;

(B) filed a petition under Section 48-3a-204; or

(C) delivered to the division for filing a statement of change under Section 16-17-206 or a statement of correction under Section 48-3a-208.

(2) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the limited liability company to the division for filing under this chapter and imposes that responsibility on one or more other members, the liability stated in Subsection (1)(b) applies to those other members and not to the member that the operating agreement relieves of the responsibility.

(3) An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of perjury that the information stated in the record is accurate.

Enacted by Chapter 412, 2013 General Session

48-3a-211. Certificate of good standing or registration.

(1) On request of any person, the division shall issue a certificate of good standing for a limited liability company or a certificate of registration for a registered foreign limited liability company.

(2) A certificate under Subsection (1) must state:

- (a) the limited liability company's name or the registered foreign limited liability company's name used in this state;
 - (b) in the case of a limited liability company:
 - (i) that a certificate of organization has been filed and has taken effect;
 - (ii) the date the certificate of organization became effective;
 - (iii) the period of the limited liability company's duration if the records of the division reflect that its period of duration is less than perpetual; and
 - (iv) that:
 - (A) no statement of dissolution, statement of administrative dissolution, or statement of termination has been filed;
 - (B) the records of the division do not otherwise reflect that the company has been dissolved or terminated; and
 - (C) a proceeding is not pending under Section 48-3a-708;
 - (c) in the case of a registered foreign limited liability company, that it is registered to do business in this state;
 - (d) that all fees, taxes, interest, and penalties owed to this state by the limited liability company or foreign limited liability company and collected through the division have been paid, if:
 - (i) payment is reflected in the records of the division; and
 - (ii) nonpayment affects the good standing or registration of the limited liability company or foreign limited liability company;
 - (e) that the most recent annual report required by Section 48-3a-212 has been delivered to the division for filing; and
 - (f) other facts reflected in the records of the division pertaining to the limited liability company or foreign limited liability company which the person requesting the certificate reasonably requests.
- (3) Subject to any qualification stated in the certificate, a certificate issued by the division under Subsection (1) may be relied upon as conclusive evidence of the facts stated in the certificate.

Enacted by Chapter 412, 2013 General Session

48-3a-212. Annual report for division.

- (1) A limited liability company or a registered foreign limited liability company shall deliver to the division for filing an annual report that states:
- (a) the name of the limited liability company or registered foreign limited liability company;
 - (b) the information required by Subsection 16-17-203(1);
 - (c) the street and mailing addresses of its principal office;
 - (d) the name of at least one governing person; and
 - (e) in the case of a foreign limited liability company, its jurisdiction of formation and any alternate name adopted under Subsection 48-3a-906(1).
- (2) Information in the annual report must be current as of the date the report is signed by the limited liability company or registered foreign limited liability company.
- (3) A report must be delivered to the division for each year following the calendar year in which the limited liability company's certificate of organization became

effective or the registered foreign limited liability company registered to do business in this state:

(a) in the case of a limited liability company, the annual report must be delivered to the division during the month in which is the anniversary date on which the limited liability company's certificate of formation became effective; and

(b) in the case of a registered foreign limited liability company, the annual report must be delivered to the division during the month in which is the anniversary date on which the registered foreign limited liability company registered to do business in this state.

(4) If an annual report does not contain the information required by this section, the division promptly shall notify the reporting limited liability company or registered foreign limited liability company in a record and return the report for correction.

(5) If an annual report contains the name or address of a registered agent which differs from the information shown in the records of the division immediately before the annual report becomes effective, the differing information in the annual report is considered a statement of change under Section 16-17-206.

Enacted by Chapter 412, 2013 General Session

48-3a-301. No agency powers of member as member.

(1) A member is not an agent of a limited liability company solely by reason of being a member.

(2) A person's status as a member does not prevent or restrict law other than this chapter from imposing liability on a limited liability company because of the person's conduct.

Enacted by Chapter 412, 2013 General Session

48-3a-302. Statement of authority.

(1) A limited liability company may deliver to the division for filing a statement of authority. The statement:

(a) must include the name of the limited liability company and the street and mailing addresses of its registered agent;

(b) with respect to any position that exists in or with respect to the limited liability company, may state the authority, or limitations on the authority, of all persons holding the position to:

(i) execute an instrument transferring real property held in the name of the limited liability company; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the limited liability company; and

(c) may state the authority, or limitations on the authority, of a specific person to:

(i) execute an instrument transferring real property held in the name of the limited liability company; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the limited liability company.

(2) To amend or cancel a statement of authority filed by the division, a limited

liability company must deliver to the division for filing an amendment or cancellation stating:

- (a) the name of the limited liability company;
- (b) the street and mailing addresses of the limited liability company's registered agent;
- (c) the date the statement being affected became effective; and
- (d) the contents of the amendment or a declaration that the statement is canceled.

(3) A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

(4) Subject to Subsection (3) and Subsection 48-3a-103(4), and except as otherwise provided in Subsections (6), (7), and (8), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

(5) Subject to Subsection (3), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

- (a) the person has knowledge to the contrary;
- (b) the statement of authority has been canceled or restrictively amended under Subsection (2); or

(c) a limitation on the grant is contained in another statement of authority that became effective after the statement of authority containing the grant became effective.

(6) Subject to Subsection (3), an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and a certified copy of which is recorded in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(a) the statement of authority has been canceled or restrictively amended under Subsection (2), and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

(b) a limitation on the grant is contained in another statement of authority that became effective after the statement of authority containing the grant became effective, and a certified copy of the later-effective statement of authority is recorded in the office for recording transfers of the real property.

(7) Subject to Subsection (3), if a certified copy of an effective statement of authority containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

(8) Subject to Subsection (9), an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of Subsection (6) and is a limitation on authority for the purposes of Subsection (7).

(9) After a statement of dissolution becomes effective, a limited liability company may deliver to the division for filing and, if appropriate, may record a statement of authority that is designated as a postdissolution statement of authority. The

postdissolution statement of authority operates as provided in Subsections (6) and (7).

(10) Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement of authority, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under Subsection (6) or (7).

(11) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for purposes of Subsection (6)(a).

Enacted by Chapter 412, 2013 General Session

48-3a-303. Statement of denial.

A person named in a filed statement of authority granting that person authority may deliver to the division for filing a statement of denial that:

(1) provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and

(2) denies the grant of authority.

Enacted by Chapter 412, 2013 General Session

48-3a-304. Liability of members and managers.

(1) A debt, obligation, or other liability of a limited liability company is solely the debt, obligation, or other liability of the limited liability company. A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited liability company solely by reason of being or acting as a member or manager. This Subsection (1) applies regardless of the dissolution of the limited liability company.

(2) The failure of a limited liability company to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a member or manager of the limited liability company for a debt, obligation, or other liability of the limited liability company.

Enacted by Chapter 412, 2013 General Session

48-3a-401. Becoming a member.

(1) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the limited liability company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

(2) If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the limited liability company. The organizer acts on behalf of the persons in forming the limited liability company and may be, but need not be, one of the persons.

(3) After formation of a limited liability company, a person becomes a member:

(a) as provided in the operating agreement;

(b) as the result of a transaction effective under Part 10, Merger, Interest

Exchange, Conversion, and Domestication;

(c) with the consent of all the members; or

(d) as provided in Subsection 48-3a-701(3).

(4) A person may become a member without:

(a) acquiring a transferable interest; or

(b) making or being obligated to make a contribution to the limited liability company.

Enacted by Chapter 412, 2013 General Session

48-3a-402. Form of contribution.

A contribution may consist of property transferred to, services performed for, or another benefit provided to the limited liability company or an agreement to transfer property to, perform services for, or provide another benefit to the company.

Enacted by Chapter 412, 2013 General Session

48-3a-403. Liability for contributions.

(1) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally.

(2) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited liability company to contribute money equal to the value of the part of the contribution which has not been made.

(3) The obligation of a person to make a contribution may be compromised only by consent of all members. If a creditor of a limited liability company extends credit or otherwise acts in reliance on an obligation described in Subsection (1) without notice of a compromise under this Subsection (3), the creditor may enforce the obligation.

Enacted by Chapter 412, 2013 General Session

48-3a-404. Sharing of and right to distributions before dissolution.

(1) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and persons dissociated as members, except to the extent necessary to comply with a transfer effective under Section 48-3a-502 or charging order in effect under Section 48-3a-503.

(2) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the limited liability company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(3) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in Subsection 48-3a-711(4), a limited liability company may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(4) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. However, the

limited liability company's obligation to make a distribution is subject to offset for any amount owed to the limited liability company by the member or a person dissociated as a member on whose account the distribution is made.

Enacted by Chapter 412, 2013 General Session

48-3a-405. Limitation on distributions.

(1) A limited liability company may not make a distribution, including a distribution under Section 48-3a-711, if after the distribution:

(a) the limited liability company would not be able to pay its debts as they become due in the ordinary course of the limited liability company's activities and affairs; or

(b) the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits otherwise, the amount that would be needed, if the limited liability company were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members and transferees whose preferential rights are superior to those of persons receiving the distribution.

(2) A limited liability company may base a determination that a distribution is not prohibited under Subsection (1) on:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(b) a fair valuation or other method that is reasonable under the circumstances.

(3) Except as otherwise provided in Subsection (5), the effect of a distribution under Subsection (1) is measured:

(a) in the case of a distribution as defined in Subsection 48-3a-102(4)(a), as of the earlier of:

(i) the date money or other property is transferred or debt is incurred by the limited liability company; or

(ii) the date the person entitled to the distribution ceases to own the interest or right being acquired by the limited liability company in return for the distribution;

(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) in all other cases, as of the date:

(i) the distribution is authorized, if the payment occurs not later than 120 days after that date; or

(ii) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.

(4) A limited liability company's indebtedness to a member or transferee incurred by reason of a distribution made in accordance with this section is at parity with the limited liability company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(5) A limited liability company's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of Subsection (1) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the

indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(6) In measuring the effect of a distribution under Section 48-3a-711, the liabilities of a dissolved limited liability company do not include any claim that has been disposed of under Section 48-3a-705, 48-3a-706, or 48-3a-707.

Enacted by Chapter 412, 2013 General Session

48-3a-406. Liability for improper distributions.

(1) Except as otherwise provided in Subsection (2), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of Section 48-3a-405 and in consenting to the distribution fails to comply with Section 48-3a-409, the member or manager is personally liable to the limited liability company for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 48-3a-405.

(2) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in Subsection (1) applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(3) A person that receives a distribution knowing that the distribution violated Section 48-3a-405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 48-3a-405.

(4) A person against which an action is commenced because the person is liable under Subsection (1) may:

(a) implead any other person that is liable under Subsection (1) and seek to enforce a right of contribution from the person; and

(b) implead any person that received a distribution in violation of Subsection (3) and seek to enforce a right of contribution from the person in the amount the person received in violation of Subsection (3).

(5) An action under this section is barred unless commenced not later than two years after the distribution.

Enacted by Chapter 412, 2013 General Session

48-3a-407. Management of limited liability company.

(1) A limited liability company is a member-managed limited liability company unless the operating agreement:

(a) expressly provides that:

(i) the limited liability company is or will be "manager-managed";

(ii) the limited liability company is or will be "managed by managers"; or

(iii) management of the limited liability company is or will be "vested in managers"; or

(b) includes words of similar import.

(2) In a member-managed limited liability company, the following rules apply:
(a) Except as otherwise provided in this chapter, the management and conduct of the limited liability company are vested in the members.

(b) Each member has equal rights in the management and conduct of the limited liability company's activities and affairs.

(c) A difference arising among members as to a matter in the ordinary course of the activities of the limited liability company shall be decided by a majority of the members.

(d) An act outside the ordinary course of the activities and affairs of the limited liability company may be undertaken only with the affirmative vote or consent of all members.

(e) The affirmative vote or consent of all members is required to approve a transaction under Part 10, Merger, Interest Exchange, Conversion, and Domestication.

(f) The operating agreement may be amended only with the affirmative vote or consent of all members.

(3) In a manager-managed limited liability company, the following rules apply:

(a) Except as expressly provided in this chapter, any matter relating to the activities and affairs of the limited liability company is decided exclusively by the manager, or, if there is more than one manager, by a majority of the managers.

(b) Each manager has equal rights in the management and conduct of the limited liability company's activities and affairs.

(c) The affirmative vote or consent of all members is required to:

(i) approve a transaction under Part 10, Merger, Interest Exchange, Conversion, and Domestication;

(ii) undertake any act outside the ordinary course of the limited liability company's activities and affairs; or

(iii) amend the operating agreement.

(d) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.

(e) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

(f) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

(4) An action requiring the vote or consent of members under this chapter may be taken without a meeting, and a member may appoint a proxy or other agent to vote, consent, or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(5) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the limited liability company loses the right to participate in management as a member and a

manager.

(6) A limited liability company shall reimburse a member for an advance to the limited liability company beyond the amount of capital the member agreed to contribute.

(7) A payment or advance made by a member which gives rise to an obligation of the limited liability company under Subsection (6) or Subsection 48-3a-408(1) constitutes a loan to the limited liability company which accrues interest from the date of the payment or advance.

(8) A member is not entitled to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the limited liability company.

Enacted by Chapter 412, 2013 General Session

48-3a-408. Reimbursement, indemnification, advancement, and insurance.

(1) A limited liability company shall reimburse a member of a member-managed limited liability company or the manager of a manager-managed limited liability company for any payment made by the member or manager in the course of the member's or manager's activities on behalf of the limited liability company, if the member or manager complied with Sections 48-3a-407 and 48-3a-409 in making the payment.

(2) A limited liability company shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a member or manager, if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of Section 48-3a-405, 48-3a-407, or 48-3a-409.

(3) In the ordinary course of its activities and affairs, a limited liability company may advance reasonable expenses, including attorney's fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a member or manager, if the person promises to repay the limited liability company if the person ultimately is determined not to be entitled to be indemnified under Subsection (2).

(4) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the limited liability company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under Subsection 48-3a-112(3)(g), the operating agreement could not eliminate or limit the person's liability to the limited liability company for the conduct giving rise to the liability.

Enacted by Chapter 412, 2013 General Session

48-3a-409. Standards of conduct for members and managers.

(1) A member of a member-managed limited liability company owes to the limited liability company and, subject to Subsection 48-3a-801(1), the other members the duties of loyalty and care stated in Subsections (2) and (3).

(2) The duty of loyalty of a member in a member-managed limited liability company includes the duties:

(a) to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member:

(i) in the conduct or winding up of the limited liability company's activities and affairs;

(ii) from a use by the member of the limited liability company's property; or

(iii) from the appropriation of a limited liability company opportunity;

(b) to refrain from dealing with the limited liability company in the conduct or winding up of the limited liability company's activities and affairs as or on behalf of a person having an interest adverse to the limited liability company; and

(c) to refrain from competing with the limited liability company in the conduct of the company's activities and affairs before the dissolution of the limited liability company.

(3) The duty of care of a member of a member-managed limited liability company in the conduct or winding up of the limited liability company's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A member shall discharge the duties and obligations under this chapter or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(5) A member does not violate a duty or obligation under this chapter or under the operating agreement solely because the member's conduct furthers the member's own interest.

(6) All the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(7) It is a defense to a claim under Subsection (2)(b) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(8) If, as permitted by Subsection (6) or (9)(f) or the operating agreement, a member enters into a transaction with the limited liability company which otherwise would be prohibited by Subsection (2)(b), the member's rights and obligations arising from the transaction are the same as those of a person that is not a member.

(9) In a manager-managed limited liability company, the following rules apply:

(a) Subsections (1), (2), (3), and (7) apply to the manager or managers and not the members.

(b) The duty stated under Subsection (2)(c) continues until winding up is completed.

(c) Subsection (4) applies to managers and members.

(d) Subsection (5) applies only to members.

(e) The power to ratify under Subsection (6) applies only to the members.

(f) Subject to Subsection (4), a member does not have any duty to the limited liability company or to any other member solely by reason of being a member.

Enacted by Chapter 412, 2013 General Session

48-3a-410. Rights of member, manager, and person dissociated as

member to information.

(1) In a member-managed limited liability company, the following rules apply:

(a) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the limited liability company, any record maintained by the limited liability company regarding the limited liability company's activities, affairs, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this chapter.

(b) The limited liability company shall furnish to each member:

(i) without demand, any information concerning the limited liability company's activities, affairs, financial condition, and other circumstances which the limited liability company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this chapter, except to the extent the limited liability company can establish that it reasonably believes the member already knows the information; and

(ii) on demand, any other information concerning the limited liability company's activities, affairs, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(c) The duty to furnish information under Subsection (1)(b) also applies to each member to the extent the member knows any of the information described in Subsection (1)(b).

(2) In a manager-managed limited liability company, the following rules apply:

(a) The informational rights stated in Subsection (1) and the duty stated in Subsection (1)(c) apply to the managers and not the members.

(b) During regular business hours and at a reasonable location specified by the limited liability company, a member may inspect and copy full information regarding the activities, affairs, financial condition, and other circumstances of the limited liability company as is just and reasonable if:

(i) the member seeks the information for a purpose reasonably related to the member's interest as a member;

(ii) the member makes a demand in a record received by the limited liability company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(iii) the information sought is directly connected to the member's purpose.

(c) Not later than 10 days after receiving a demand pursuant to Subsection (2)(b)(ii), the limited liability company shall in a record inform the member that made the demand of:

(i) the information that the limited liability company will provide in response to the demand and when and where the limited liability company will provide the information; and

(ii) the limited liability company's reasons for declining, if the limited liability company declines to provide any demanded information.

(d) Whenever this chapter or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the limited liability company shall, without demand, provide the member with all information that is

known to the limited liability company and is material to the member's decision.

(3) Subject to Subsection (9), on 10 days' demand made in a record received by a limited liability company, a person dissociated as a member may have access to information to which the person was entitled while a member if:

(a) the information pertains to the period during which the person was a member;

(b) the person seeks the information in good faith; and

(c) the person satisfies the requirements imposed on a member by Subsection (2)(b).

(4) A limited liability company shall respond to a demand made pursuant to Subsection (3) in the manner provided in Subsection (2)(c).

(5) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(6) A member or person dissociated as a member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under Subsection (9) applies both to the agent or legal representative and the member or person dissociated as a member.

(7) Subject to Subsection (9), the rights under this section do not extend to a person as transferee.

(8) If a member dies, Section 48-3a-504 applies.

(9) In addition to any restriction or condition stated in the operating agreement, a limited liability company, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this Subsection (9), the limited liability company has the burden of proving reasonableness.

Enacted by Chapter 412, 2013 General Session

48-3a-501. Nature of transferable interest.

A transferable interest is personal property.

Enacted by Chapter 412, 2013 General Session

48-3a-502. Transfer of transferable interest.

(1) Subject to Subsection 48-3a-503(6), a transfer, in whole or in part, of a transferable interest:

(a) is permissible;

(b) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities and affairs; and

(c) subject to Section 48-3a-504, does not entitle the transferee to:

(i) participate in the management or conduct of the limited liability company's activities and affairs; or

(ii) except as otherwise provided in Subsection (3), have access to records or

other information concerning the limited liability company's activities and affairs.

(2) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(3) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the limited liability company's transactions only from the date of dissolution.

(4) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(5) A limited liability company need not give effect to a transferee's rights under this section until the limited liability company knows or has notice of the transfer.

(6) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having knowledge or notice of the restriction at the time of transfer.

(7) Except as otherwise provided in Subsection 48-3a-602(5)(b), if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all the duties and obligations of a member.

(8) If a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under Section 48-3a-403 and Subsection 48-3a-406(3) known to the transferee when the transferee becomes a member.

Enacted by Chapter 412, 2013 General Session

48-3a-503. Charging order.

(1) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. Except as otherwise provided in Subsection (6), a charging order constitutes a lien on a judgment debtor's transferable interest and, after the limited liability company has been served with the charging order, requires the limited liability company to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

(2) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under Subsection (1), the court may:

(a) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(b) make all other orders necessary to give effect to the charging order.

(3) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. Except as otherwise provided in Subsection (6), the purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject to Section 48-3a-502.

(4) At any time before foreclosure under Subsection (3), the member or transferee whose transferable interest is subject to a charging order under Subsection (1) may extinguish the charging order by satisfying the judgment and filing a certified

copy of the satisfaction with the court that issued the charging order.

(5) At any time before foreclosure under Subsection (3), a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(6) If a court orders foreclosure of a charging order lien against the sole member of a limited liability company:

- (a) the court shall confirm the sale;
- (b) the purchaser at the sale obtains the member's entire interest, not only the member's transferable interest;
- (c) the purchaser thereby becomes a member; and
- (d) the person whose interest was subject to the foreclosed charging order is dissociated as a member.

(7) This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the transferable interest of the member or transferee.

(8) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

Enacted by Chapter 412, 2013 General Session

48-3a-504. Power of legal representative of deceased member.

If a member dies, the deceased member's legal representative may exercise:

- (1) the rights of a transferee provided in Subsection 48-3a-502(3); and
- (2) for the purposes of settling the estate, the rights the deceased member had under Section 48-3a-410.

Enacted by Chapter 412, 2013 General Session

48-3a-601. Power to dissociate as member -- Wrongful dissociation.

(1) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under Subsection 48-3a-602(1).

(2) A person's dissociation as a member is wrongful only if the dissociation:

- (a) is in breach of an express provision of the operating agreement; or
- (b) occurs before the completion of the winding up of the limited liability company and:

- (i) the person withdraws as a member by express will;
- (ii) the person is expelled as a member by judicial order under Subsection 48-3a-602(6);
- (iii) the person is dissociated under Subsection 48-3a-602(8); or
- (iv) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

(3) A person that wrongfully dissociates as a member is liable to the limited

liability company and, subject to Section 48-3a-801, to the other members for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the member to the limited liability company or the other members.

Enacted by Chapter 412, 2013 General Session

48-3a-602. Events causing dissociation.

A person is dissociated as a member when:

(1) the limited liability company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the limited liability company had notice, on that later date;

(2) an event stated in the operating agreement as causing the person's dissociation occurs;

(3) the person's entire interest is transferred in a foreclosure sale under Subsection 48-3a-503(6);

(4) the person is expelled as a member pursuant to the operating agreement;

(5) the person is expelled as a member by the unanimous consent of the other members if:

(a) it is unlawful to carry on the limited liability company's activities and affairs with the person as a member;

(b) there has been a transfer of all the person's transferable interest in the limited liability company, other than:

(i) a transfer for security purposes; or

(ii) a charging order in effect under Section 48-3a-503 which has not been foreclosed;

(c) the person is a corporation, and:

(i) the limited liability company notifies the person that it will be expelled as a member because the person has filed a statement of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation; and

(ii) not later than 90 days after the notification the statement of dissolution or the equivalent has not been revoked or its charter or right to conduct business has not been reinstated; or

(d) the person is an unincorporated entity that has been dissolved and whose business is being wound up;

(6) on application by the limited liability company or a member in a direct action under Section 48-3a-801, the person is expelled as a member by judicial order because the person:

(a) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited liability company's activities and affairs;

(b) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the operating agreement or a duty or obligation under Section 48-3a-409; or

(c) has engaged or is engaging in conduct relating to the limited liability company's activities and affairs which makes it not reasonably practicable to carry on

the activities and affairs with the person as a member;

(7) in the case of an individual:

(a) the individual dies; or

(b) in a member-managed limited liability company:

(i) a guardian or general conservator for the individual is appointed; or

(ii) a court orders that the individual has otherwise become incapable of

performing the individual's duties as a member under this chapter or the operating agreement;

(8) in a member-managed limited liability company, the person:

(a) becomes a debtor in bankruptcy;

(b) executes an assignment for the benefit of creditors; or

(c) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all the person's property;

(9) in the case of a person that is a testamentary or inter vivos trust or is acting as a member by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited liability company is distributed;

(10) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited liability company is distributed, but not merely by reason of substitution of a successor personal representative;

(11) in the case of a person that is not an individual, corporation, unincorporated entity, trust, or estate, the existence of the person terminates;

(12) the limited liability company participates in a merger under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and:

(a) the limited liability company is not the surviving entity; or

(b) otherwise as a result of the merger, the person ceases to be a member;

(13) the limited liability company participates in an interest exchange under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and, as a result of the interest exchange, the person ceases to be a member;

(14) the limited liability company participates in a conversion under Part 10, Merger, Interest Exchange, Conversion, and Domestication;

(15) the limited liability company participates in a domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and, as a result of the domestication, the person ceases to be a member; or

(16) the limited liability company dissolves and completes winding up.

Enacted by Chapter 412, 2013 General Session

48-3a-603. Effect of dissociation.

(1) If a person is dissociated as a member:

(a) the person's right to participate as a member in the management and conduct of the company's activities and affairs terminates;

(b) if the limited liability company is member-managed, the person's duties and obligations under Section 48-3a-409 as a member end with regard to matters arising and events occurring after the person's dissociation; and

(c) subject to Section 48-3a-504 and Part 10, Merger, Interest Exchange,

Conversion, and Domestication, any transferable interest owned by the person in the person's capacity as a member immediately before dissociation as a member is owned by the person solely as a transferee.

(2) A person's dissociation as a member does not of itself discharge the person from any debt, obligation, or other liability to the limited liability company or the other members which the person incurred while a member.

Enacted by Chapter 412, 2013 General Session

48-3a-701. Events causing dissolution.

A limited liability company is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

(1) an event or circumstance that the operating agreement states causes dissolution;

(2) the consent of all the members;

(3) the passage of 90 consecutive days during which the limited liability company has no members unless:

(a) consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and

(b) at least one person becomes a member in accordance with the consent;

(4) on application by a member, the entry by the district court of an order dissolving the limited liability company on the grounds that:

(a) the conduct of all or substantially all of the limited liability company's activities and affairs is unlawful; or

(b) it is not reasonably practicable to carry on the limited liability company's activities and affairs in conformity with the certificate of organization and the operating agreement;

(5) on application by a member, the entry by the district court of an order dissolving the limited liability company on the grounds that the managers or those members in control of the limited liability company:

(a) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(b) have acted, are acting, or will act in a manner that is oppressive and was, is, or will be directly harmful to the applicant; or

(6) the signing and filing of a statement of administrative dissolution by the division under Subsection 48-3a-708(3).

Enacted by Chapter 412, 2013 General Session

48-3a-702. Election to purchase in lieu of dissolution.

(1) In a proceeding under Subsection 48-3a-701(5) to dissolve a limited liability company, the limited liability company may elect or, if it fails to elect, one or more members may elect to purchase the interest in the limited liability company owned by the applicant member at the fair market value of the interest, determined as provided in this section. An election pursuant to this Subsection (1) is irrevocable unless the district court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the district court at any time within 90 days after the filing of the petition in a proceeding under Subsection 48-3a-701(5) or at any later time as the district court in its discretion may allow. If the limited liability company files an election with the district court within the 90-day period, or at any later time allowed by the district court, to purchase the interest in the limited liability company owned by the applicant member, the limited liability company shall purchase the interest in the manner provided in this section.

(3) If the limited liability company does not file an election with the district court within the time period, but an election to purchase the interest in the limited liability company owned by the applicant member is filed by one or more members within the time period, the limited liability company shall, within 10 days after the later of the end of the time period allowed for the filing of elections to purchase under this section or notification from the district court of an election by members to purchase the interest in the limited liability company owned by the applicant member as provided in this section, give written notice of the election to purchase to all members of the limited liability company, other than the applicant member. The notice shall state the name and the percentage interest in the limited liability company owned by the applicant member and the name and the percentage interest in the limited liability company owned by each electing member. The notice shall advise any recipients who have not participated in the election of their right to join in the election to purchase the interest in the limited liability company in accordance with this section and of the date by which any notice of intent to participate must be filed with the district court.

(4) Members who wish to participate in the purchase of the interest in the limited liability company of the applicant member must file notice of their intention to join in the purchase by electing members no later than 30 days after the effective date of the limited liability company's notice of their right to join in the election to purchase.

(5) All members who have filed with the district court an election or notice of their intention to participate in the election to purchase the interest in the limited liability company of the applicant member thereby become irrevocably obligated to participate in the purchase of the interest from the applicant member upon the terms and conditions of this section, unless the district court otherwise directs.

(6) After an election has been filed by the limited liability company or one or more members, the proceedings under Subsection 48-3a-701(5) may not be discontinued or settled, nor may the applicant member sell or otherwise dispose of the applicant member's interest in the limited liability company, unless the district court determines that it would be equitable to the limited liability company and the members, other than the applicant member, to permit any discontinuance, settlement, sale, or other disposition.

(7) If, within 60 days after the earlier of the limited liability company filing of an election to purchase the interest in the limited liability company of the applicant member or the limited liability company's mailing of a notice to its members of the filing of an election by the members to purchase the interest in the limited liability company of the applicant member, the applicant member and electing limited liability company or members reach agreement as to the fair market value and terms of the purchase of the applicant member's interest, the district court shall enter an order directing the purchase of the applicant member's interest, upon the terms and conditions agreed to by the

parties.

(8) If the parties are unable to reach an agreement as provided for in Subsection (7), upon application of any party, the district court shall stay the proceedings under Subsection 48-3a-701(5) and determine the fair market value of the applicant member's interest in the limited liability company as of the day before the date on which the petition under Subsection 48-3a-701(5) was filed or as of any other date the district court determines to be appropriate under the circumstances and based on the factors the district court determines to be appropriate.

(9) Upon determining the fair market value of the interest in the limited liability company of the applicant member, the district court shall enter an order directing the purchase of the interest in the limited liability company upon terms and conditions the district court determines to be appropriate. The terms and conditions may include payment of the purchase price in installments, where necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses awarded by the district court, and an allocation of the interest in the limited liability company among members if the interest in the limited liability company is to be purchased by members.

(10) In allocating the applicant member's interest in the limited liability company among holders of different classes of members, the district court shall attempt to preserve the existing distribution of voting rights among member classes to the extent practicable. The district court may direct that holders of a specific class or classes may not participate in the purchase. The district court may not require any electing member to purchase more of the interest in the limited liability company owned by the applicant member than the percentage interest that the purchasing member may have set forth in the purchasing member's election or notice of intent to participate filed with the district court.

(11) Interest may be allowed at the rate and from the date determined by the district court to be equitable. However, if the district court finds that the refusal of the applicant member to accept an offer of payment was arbitrary or otherwise not in good faith, interest may not be allowed.

(12) If the district court finds that the applicant member had probable ground for relief under Subsection 48-3a-701(5), the district court may award to the applicant member reasonable fees and expenses of counsel and experts employed by the applicant member.

(13) Upon entry of an order under Subsection (7) or (9), the district court shall dismiss the petition to dissolve the limited liability company under Subsection 48-3a-701(5) and the applicant member shall no longer have any rights or status as a member of the limited liability company, except the right to receive the amounts awarded to the applicant member by the district court. The award is enforceable in the same manner as any other judgment.

(14) The purchase ordered pursuant to Subsection (9) shall be made within 10 days after the date the order becomes final, unless before that time the limited liability company files with the district court a notice of its intention to file a statement of dissolution. The statement of dissolution must then be adopted and filed within 60 days after notice.

(15) Upon filing of a statement of dissolution, the limited liability company is

dissolved and shall be wound up pursuant to Section 48-3a-703, and the order entered pursuant to Subsection (9) is no longer of any force or effect. However, the district court may award the applicant member reasonable fees and expenses in accordance with Subsection (12). The applicant member may continue to pursue any claims previously asserted on behalf of the limited liability company.

(16) Any payment by the limited liability company pursuant to an order under Subsection (7) or (9), other than an award of fees and expenses pursuant to Subsection (12), is subject to the provisions of Sections 48-3a-405 and 48-3a-406.

Enacted by Chapter 412, 2013 General Session

48-3a-703. Winding up.

(1) A dissolved limited liability company shall wind up its activities and affairs and, except as otherwise provided in Section 48-3a-704, the limited liability company continues after dissolution only for the purpose of winding up.

(2) In winding up its activities and affairs, a limited liability company:

(a) shall discharge the limited liability company's debts, obligations, and other liabilities, settle and close the limited liability company's activities and affairs, and marshal and distribute the assets of the limited liability company; and

(b) may:

(i) deliver to the division for filing a statement of dissolution stating the name of the limited liability company and that the limited liability company is dissolved;

(ii) preserve the limited liability company activities, affairs, and property as a going concern for a reasonable time;

(iii) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(iv) transfer the limited liability company's property;

(v) settle disputes by mediation or arbitration;

(vi) deliver to the division for filing a statement of termination stating the name of the limited liability company and that the limited liability company is terminated; and

(vii) perform other acts necessary or appropriate to the winding up.

(3) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities and affairs of the limited liability company. If the person does so, the person has the powers of a sole manager under Subsection 48-3a-407(3) and is deemed to be a manager for the purposes of Subsection 48-3a-304(1).

(4) If the legal representative under Subsection (3) declines or fails to wind up the limited liability company's activities and affairs, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this Subsection (4):

(a) has the powers of a sole manager under Subsection 48-3a-407(3) and is deemed to be a manager for the purposes of Subsection 48-3a-304(1); and

(b) shall promptly deliver to the division for filing an amendment to the limited liability company's certificate of organization stating:

(i) that the limited liability company has no members;

- (ii) the name and street and mailing addresses of the person; and
 - (iii) that the person has been appointed pursuant to this subsection to wind up the limited liability company.
- (5) A district court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the limited liability company's activities and affairs:
- (a) on application of a member, if the applicant establishes good cause;
 - (b) on the application of a transferee, if:
 - (i) the company does not have any members;
 - (ii) the legal representative of the last person to have been a member declines or fails to wind up the limited liability company's activities; and
 - (iii) within a reasonable time following the dissolution a person has not been appointed pursuant to Subsection (4); or
 - (c) in connection with a proceeding under Subsection 48-3a-701(4) or (5).

Enacted by Chapter 412, 2013 General Session

48-3a-704. Rescinding dissolution.

(1) A limited liability company may rescind its dissolution, unless a statement of termination applicable to the limited liability company is effective, the district court has entered an order under Subsection 48-3a-701(4) or (5) dissolving the limited liability company, or the division has dissolved the limited liability company under Section 48-3a-708.

(2) Rescinding dissolution under this section requires:

- (a) the consent of each member;
- (b) if a statement of dissolution applicable to the limited liability company has been filed by the division but has not become effective, the delivery to the division for filing of a statement of withdrawal under Section 48-3a-207 applicable to the statement of dissolution; and
- (c) if a statement of dissolution applicable to the limited liability company is effective, the delivery to the division for filing of a statement of correction under Section 48-3a-208 stating that dissolution has been rescinded under this section.

(3) If a limited liability company rescinds its dissolution:

- (a) the limited liability company resumes carrying on its activities and affairs as if dissolution had never occurred;
- (b) subject to Subsection (3)(c), any liability incurred by the limited liability company after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and
- (c) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

Enacted by Chapter 412, 2013 General Session

48-3a-705. Known claims against dissolved limited liability company.

(1) A dissolved limited liability company in winding up may dispose of the known

claims against it by following the procedures described in this section.

(2) A limited liability company in winding up, electing to dispose of known claims pursuant to this section, may give written notice of the limited liability company's dissolution to known claimants at any time after the effective date of the dissolution.

The written notice must:

- (a) describe the information that must be included in a claim;
- (b) provide an address to which written notice of any claim must be given to the limited liability company;
- (c) state the deadline, which may not be fewer than 120 days after the effective date of the notice, by which the dissolved limited liability company must receive the claim; and
- (d) state that, unless sooner barred by another state statute limiting actions, the claim will be barred if not received by the deadline.

(3) Unless sooner barred by another state statute limiting actions, a claim against the dissolved limited liability company is barred if:

- (a) a claimant was given notice under Subsection (2) and the claim is not received by the dissolved limited liability company by the deadline; or
- (b) the dissolved limited liability company delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim and the claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

(4) Claims which are not rejected by the dissolved limited liability company in writing within 90 days after receipt of the claim by the dissolved limited liability company shall be considered approved.

(5) The failure of the dissolved limited liability company to give notice to any known claimant pursuant to Subsection (2) does not affect the disposition under this section of any claim held by any other known claimant.

(6) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

Enacted by Chapter 412, 2013 General Session

48-3a-706. Other claims against dissolved limited liability company.

(1) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the limited liability company to present them in accordance with the notice.

(2) A notice under Subsection (1) must:

- (a) be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited liability company's principal office is located or, if the principal office is not located in this state, in the county in which the office of the limited liability company's registered agent is or was last located and in accordance with Section 45-1-101;

(b) describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent; and

(c) state that a claim against the limited liability company is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice.

(3) If a dissolved limited liability company publishes a notice in accordance with Subsection (2), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the limited liability company not later than three years after the publication date of the notice:

(a) a claimant that did not receive notice in a record under Section 48-3a-705;

(b) a claimant whose claim was timely sent to the limited liability company but not acted on; and

(c) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(4) A claim not barred under this section or Section 48-3a-705 may be enforced:

(a) against a dissolved limited liability company, to the extent of its undistributed assets; and

(b) except as otherwise provided in Section 48-3a-707, if assets of the limited liability company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the limited liability company's assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this subsection may not exceed the total amount of assets distributed to the person after dissolution.

Enacted by Chapter 412, 2013 General Session

48-3a-707. Court proceedings.

(1) A dissolved limited liability company that has published a notice under Section 48-3a-706 may file an application with district court in the county where the dissolved limited liability company's principal office is located, or, if the principal office is not located in this state, where the office of its registered agent is located, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the limited liability company, or are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved limited liability company, are reasonably expected to arise after the effective date of dissolution. Security is not required for any claim that is or is reasonably anticipated to be barred under Subsection 48-3a-706(3).

(2) Not later than 10 days after the filing of an application under Subsection (1), the dissolved limited liability company shall give notice of the proceeding to each claimant holding a contingent claim known to the limited liability company.

(3) In any proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability company.

(4) A dissolved limited liability company that provides security in the amount and form ordered by the court under Subsection (1) satisfies the limited liability company's obligations with respect to claims that are contingent, have not been made known to the

limited liability company, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a member or transferee that received assets in liquidation.

Enacted by Chapter 412, 2013 General Session

48-3a-708. Administrative dissolution.

(1) The division may commence a proceeding under Subsections (2) and (3) to dissolve a limited liability company administratively if the limited liability company does not:

- (a) pay any fee, tax, interest, or penalty required to be paid to the division not later than 60 days after it is due;
 - (b) deliver an annual report to the division not later than 60 days after it is due;
- or

(c) have a registered agent in this state for 60 consecutive days.

(2) If the division determines that one or more grounds exist for administratively dissolving a limited liability company, the division shall serve the limited liability company with notice in a record of division's determination.

(3) If a limited liability company, not later than 60 days after service of the notice under Subsection (2), does not cure or demonstrate to the satisfaction of the division the nonexistence of each ground determined by the division, the division shall administratively dissolve the limited liability company by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The division shall file the statement and serve a copy on the limited liability company pursuant to Section 48-3a-209.

(4) A limited liability company that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under Sections 48-3a-703, 48-3a-705, 48-3a-706, 48-3a-707, and 48-3a-711, or to apply for reinstatement under Section 48-3a-709.

(5) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

Enacted by Chapter 412, 2013 General Session

48-3a-709. Reinstatement.

(1) A limited liability company that is administratively dissolved under Section 48-3a-708 may apply to the division for reinstatement not later than two years after the effective date of dissolution. The application must state:

- (a) the name of the limited liability company at the time of its administrative dissolution and, if needed, a different name that satisfies Section 48-3a-108;
 - (b) the address of the principal office of the limited liability company and the name and address of its registered agent;
 - (c) the effective date of the limited liability company's administrative dissolution;
- and
- (d) that the grounds for dissolution did not exist or have been cured.

(2) To be reinstated, a limited liability company must pay all fees, taxes, interest, and penalties that were due to the division at the time of its administrative dissolution and all fees, taxes, interest, and penalties that would have been due to the division while the limited liability company was administratively dissolved.

(3) If the division determines that an application under Subsection (1) contains the information required by Subsection (1), is satisfied that the information is correct, and determines that all payments required to be made to the division by Subsection (2) have been made, the division shall:

(a) cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the division's determination and the effective date of reinstatement;

(b) file the statement of reinstatement; and

(c) serve a copy of the statement of reinstatement on the limited liability company.

(4) When reinstatement under this section is effective, the following rules apply:

(a) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution.

(b) The limited liability company may resume its activities and affairs as if the administrative dissolution had not occurred.

(c) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.

Enacted by Chapter 412, 2013 General Session

48-3a-710. Judicial review of denial of reinstatement.

(1) If the division denies a limited liability company's application for reinstatement following administrative dissolution, the division shall serve the limited liability company with a notice in a record that explains the reasons for the denial.

(2) A limited liability company may seek judicial review of denial of reinstatement in the district court not later than 30 days after service of the notice of denial.

Enacted by Chapter 412, 2013 General Session

48-3a-711. Disposition of assets in winding up.

(1) In winding up its activities and affairs, a limited liability company shall apply its assets to discharge its obligations to creditors, including members that are creditors.

(2) After a limited liability company complies with Subsection (1), any surplus must be distributed in the following order, subject to any charging order in effect under Section 48-3a-503:

(a) to each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and

(b) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 48-3a-502.

(3) If a limited liability company does not have sufficient surplus to comply with Subsection (2)(a), any surplus must be distributed among the owners of transferable

interests in proportion to the value of the respective unreturned contributions.

(4) All distributions made under Subsections (2) and (3) must be paid in money.

Enacted by Chapter 412, 2013 General Session

48-3a-801. Direct action by member.

(1) Subject to Subsection (2), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

(2) A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

Enacted by Chapter 412, 2013 General Session

48-3a-802. Derivative action.

A member may maintain a derivative action to enforce a right of a limited liability company if:

(1) the member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the limited liability company to bring an action to enforce the right, and the managers or other members do not bring the action within a reasonable time; or

(2) a demand under Subsection (1) would be futile.

Enacted by Chapter 412, 2013 General Session

48-3a-803. Proper plaintiff.

A derivative action to enforce a right of a limited liability company may be maintained only by a person that is a member at the time the action is commenced and:

(1) was a member when the conduct giving rise to the action occurred; or

(2) whose status as a member devolved on the person by operation of law or pursuant to the terms of the operating agreement from a person that was a member at the time of the conduct.

Enacted by Chapter 412, 2013 General Session

48-3a-804. Pleading.

In a derivative action, the complaint must state with particularity:

(1) the date and content of plaintiff's demand and the response by the managers or other members to the demand; or

(2) why the demand should be excused as futile.

Enacted by Chapter 412, 2013 General Session

48-3a-805. Special litigation committee.

(1) If a limited liability company is named as or made a party in a derivative proceeding, the limited liability company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the limited liability company. If the limited liability company appoints a special litigation committee, on motion by the committee made in the name of the limited liability company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This Subsection (1) does not prevent the court from:

- (a) enforcing a person's right to information under Section 48-3a-410; or
- (b) granting extraordinary relief in the form of a temporary restraining order or preliminary injunction upon a showing of good cause.

(2) A special litigation committee must be composed of one or more disinterested and independent individuals, who may be members.

(3) A special litigation committee may be appointed:

- (a) in a member-managed limited liability company:
 - (i) by the consent of a majority of the members not named as parties in the proceeding; and
 - (ii) if all members are named as parties in the proceeding, by a majority of the members named as defendants; or
- (b) in a manager-managed limited liability company:
 - (i) by a majority of the managers not named as parties in the proceeding; and
 - (ii) if all managers are named as parties in the proceeding, by a majority of the managers named as defendants.

(4) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

- (a) continue under the control of the plaintiff;
- (b) continue under the control of the committee;
- (c) be settled on terms approved by the committee; or
- (d) be dismissed.

(5) After making a determination under Subsection (4), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under Subsection (1) and allow the action to continue under the control of the plaintiff.

Enacted by Chapter 412, 2013 General Session

48-3a-806. Proceeds and expenses.

- (1) Except as otherwise provided in Subsection (2):
 - (a) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and
 - (b) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the limited liability company.
- (2) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.
- (3) A derivative action on behalf of a limited liability company may not be voluntarily dismissed or settled without the court's approval.

Enacted by Chapter 412, 2013 General Session

48-3a-901. Governing law.

- (1) The law of the jurisdiction of formation of a foreign limited liability company governs:
 - (a) the internal affairs of the foreign limited liability company; and
 - (b) the liability of a member as member and a manager as manager for a debt, obligation, or other liability of the company.
- (2) A foreign limited liability company is not precluded from registering to do business in this state because of any difference between the law of the jurisdiction of formation and the law of this state.
- (3) Registration of a foreign limited liability company to do business in this state does not authorize the foreign limited liability company to engage in any activities or affairs or exercise any power that a limited liability company may not engage in or exercise in this state.
- (4) (a) The division may permit a tribal limited liability company to apply for authority to transact business in the state in the same manner as a foreign limited liability company formed in another state.
 - (b) If a tribal limited liability company elects to apply for authority to transact business in the state, for purposes of this chapter, the tribal limited liability company shall be treated in the same manner as a foreign limited liability company formed under the laws of another state.

Enacted by Chapter 412, 2013 General Session

48-3a-902. Registration to do business in this state.

- (1) A foreign limited liability company may not do business in this state until it registers with the division under this chapter.
- (2) A foreign limited liability company doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state.
- (3) The failure of a foreign limited liability company to register to do business in this state does not impair the validity of a contract or act of the foreign limited liability company or preclude it from defending an action or proceeding in this state.

(4) A limitation on the liability of a member or manager of a foreign limited liability company is not waived solely because the foreign limited liability company does business in this state without registering to do business in this state.

(5) Subsections 48-3a-901(1) and (2) apply even if a foreign limited liability company fails to register under this chapter.

Enacted by Chapter 412, 2013 General Session

48-3a-903. Foreign registration statement.

To register to do business in this state, a foreign limited liability company must deliver a foreign registration statement to the division for filing. The statement must state:

- (1) the name of the foreign limited liability company and, if the name does not comply with Section 48-3a-108, an alternate name adopted pursuant to Subsection 48-3a-906(1);
- (2) that the company is a foreign limited liability company;
- (3) the name of the foreign limited liability company's jurisdiction of formation;
- (4) the street and mailing addresses of the foreign limited liability company's principal office and, if the law of the jurisdiction of formation requires the foreign limited liability company to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and
- (5) the information required by Subsection 16-17-203(1).

Enacted by Chapter 412, 2013 General Session

48-3a-904. Amendment of foreign registration statement.

A registered foreign limited liability company shall deliver to the division for filing an amendment to its foreign registration statement if there is a change in:

- (1) the name of the foreign limited liability company;
- (2) the foreign limited liability company's jurisdiction of formation;
- (3) an address required by Subsection 48-3a-903(4); or
- (4) the information required by Subsection 48-3a-903(5).

Enacted by Chapter 412, 2013 General Session

48-3a-905. Activities not constituting doing business.

(1) Activities of a foreign limited liability company which do not constitute doing business in this state under this part include:

- (a) maintaining, defending, mediating, arbitrating, or settling an action or proceeding;
- (b) carrying on any activity concerning its internal affairs, including holding meetings of its members or managers;
- (c) maintaining accounts in financial institutions;
- (d) maintaining offices or agencies for the transfer, exchange, and registration of the securities of the foreign limited liability company or maintaining trustees or depositories with respect to those securities;

- (e) selling through independent contractors;
 - (f) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;
 - (g) creating or acquiring indebtedness, mortgages, or security interests in property;
 - (h) securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting, or maintaining property;
 - (i) conducting an isolated transaction that is not in the course of similar transactions;
 - (j) owning, without more, property; and
 - (k) doing business in interstate commerce.
- (2) A person does not do business in this state solely by being a member or manager of a foreign limited liability company that does business in this state.
- (3) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under law of this state other than this chapter.

Enacted by Chapter 412, 2013 General Session

48-3a-906. Noncomplying name of foreign limited liability company.

(1) A foreign limited liability company whose name does not comply with Section 48-3a-108 may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with Section 48-3a-108. A registered foreign limited liability company that registers under an alternate name under this Subsection (1) need not comply with Title 42, Chapter 2, Conducting Business Under Assumed Name. After registering to do business in this state with an alternate name, a registered foreign limited liability company shall do business in this state under:

- (a) the alternate name;
- (b) the foreign limited liability company's name, with the addition of its jurisdiction of formation; or
- (c) an assumed or fictitious name the foreign limited liability company is authorized to use under Title 42, Chapter 2, Conducting Business Under Assumed Name.

(2) If a registered foreign limited liability company changes its name to one that does not comply with Section 48-3a-108, it may not do business in this state until it complies with Subsection (1) by amending its registration to adopt an alternate name that complies with Section 48-3a-108.

Enacted by Chapter 412, 2013 General Session

48-3a-907. Withdrawal deemed on conversion to domestic filing entity or domestic limited liability partnership.

A registered foreign limited liability company that converts to a domestic limited liability partnership or to a domestic entity that is organized, incorporated, or otherwise formed through the delivery of a record to the division for filing is deemed to have withdrawn its registration on the effective date of the conversion.

Enacted by Chapter 412, 2013 General Session

48-3a-908. Withdrawal on dissolution or conversion to nonfiling entity other than limited liability partnership.

(1) A registered foreign limited liability company that has dissolved and completed winding up or has converted to a domestic or foreign entity that is not organized, incorporated, or otherwise formed through the public filing of a record, other than a limited liability partnership, shall deliver a statement of withdrawal to the division for filing. The statement must state:

(a) in the case of a foreign limited liability company that has completed winding up:

(i) its name and jurisdiction of formation; and

(ii) that the foreign limited liability company surrenders its registration to do business in this state; and

(b) in the case of a foreign limited liability company that has converted:

(i) the name of the converting foreign limited liability company and its jurisdiction of formation;

(ii) the type of entity to which the foreign limited liability company has converted and its jurisdiction of formation;

(iii) that the converted entity surrenders the converting foreign limited liability company's registration to do business in this state and revokes the authority of the converting foreign limited liability company's registered agent to act as registered agent in this state on behalf of the foreign limited liability company or the converted entity; and

(iv) a mailing address to which service of process may be made under Subsection (2).

(2) After a withdrawal under this section of a foreign limited liability company that has converted to another type of entity is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited liability company was registered to do business in this state may be made pursuant to Subsection 16-17-301(2).

Enacted by Chapter 412, 2013 General Session

48-3a-909. Transfer of registration.

(1) When a registered foreign limited liability company has merged into a foreign entity that is not registered to do business in this state or has converted to a foreign entity required to register with the division to do business in this state, the foreign entity shall deliver to the division for filing an application for transfer of registration. The application must state:

(a) the name of the registered foreign limited liability company before the merger or conversion;

(b) that before the merger or conversion the registration pertained to a foreign limited liability company;

(c) the name of the applicant foreign entity into which the foreign limited liability company has merged or to which it has been converted, and, if the name does not

comply with Section 48-3a-108 or similar provision of law of this state governing an entity of the same type as the applicant foreign entity, an alternate name adopted pursuant to Subsection 48-3a-906(1) or similar provision of law of this state governing a foreign entity registered to do business in this state of the same type as the applicable foreign entity;

(d) the type of entity of the applicant foreign entity and its jurisdiction of formation;

(e) the street and mailing addresses of the principal office of the applicant foreign entity and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(f) the information required under Subsection 16-17-203(1).

(2) When an application for transfer of registration takes effect, the registration of the foreign limited liability company to do business in this state is transferred without interruption to the foreign entity into which the foreign company has merged or to which it has been converted.

Enacted by Chapter 412, 2013 General Session

48-3a-910. Termination of registration.

(1) The division may terminate the registration of a registered foreign limited liability company in the manner provided in Subsections (2) and (3) if the foreign limited liability company does not:

(a) pay, not later than 60 days after the due date, any fee, tax, interest, or penalty required to be paid to the division under this chapter or law other than this chapter;

(b) deliver to the division for filing, not later than 60 days after the due date, an annual report required under Section 48-3a-212;

(c) have a registered agent as required by Section 48-3a-111; or

(d) deliver to the division for filing a statement of a change under Section 16-17-206 not later than 30 days after a change has occurred in the name or address of the registered agent.

(2) The division may terminate the registration of a registered foreign limited liability company by:

(a) filing a notice of termination or noting the termination in the records of the division; and

(b) delivering a copy of the notice or the information in the notation to the foreign limited liability company's registered agent, or if the foreign limited liability company does not have a registered agent, to the foreign limited liability company's principal office.

(3) A notice must state or the information in the notation must include:

(a) the effective date of the termination, which must be at least 60 days after the date the division delivers the copy; and

(b) the grounds for termination under Subsection (1).

(4) The authority of a registered foreign limited liability company to do business in this state ceases on the effective date of the notice of termination or notation under

Subsection (2), unless before that date the foreign limited liability company cures each ground for termination stated in the notice or notation. If the foreign limited liability company cures each ground, the division shall file a record so stating.

Enacted by Chapter 412, 2013 General Session

48-3a-911. Withdrawal of registration of registered foreign limited liability company.

(1) A registered foreign limited liability company may withdraw its registration by delivering a statement of withdrawal to the division for filing. The statement of withdrawal must state:

(a) the name of the foreign limited liability company and its jurisdiction of formation;

(b) that the foreign limited liability company is not doing business in this state and that it withdraws its registration to do business in this state;

(c) that the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf in this state; and

(d) an address to which service of process may be made under Subsection (2).

(2) After the withdrawal of the registration of a foreign limited liability company, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited liability company was registered to do business in this state may be made pursuant to Subsection 16-17-301(2).

Enacted by Chapter 412, 2013 General Session

48-3a-912. Action by attorney general.

The attorney general may maintain an action to enjoin a foreign limited liability company from doing business in this state in violation of this part.

Enacted by Chapter 412, 2013 General Session

48-3a-1001. Definitions.

In this part:

(1) "Acquired entity" means the entity, all of one or more classes or series of interests which are acquired in an interest exchange.

(2) "Acquiring entity" means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.

(3) "Conversion" means a transaction authorized by Sections 48-3a-1041 through 48-3a-1046.

(4) "Converted entity" means the converting entity as it continues in existence after a conversion.

(5) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to Section 48-3a-1043 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.

(6) "Distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity.

(7) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.

(8) "Domesticated limited liability company" means the domesticating limited liability company as it continues in existence after a domestication.

(9) "Domesticating limited liability company" means the domestic limited liability company that approves a plan of domestication pursuant to Section 48-3a-1053 or the foreign limited liability company that approves a domestication pursuant to the law of its jurisdiction of formation.

(10) "Domestication" means a transaction authorized by Sections 48-3a-1051 through 48-3a-1056.

(11) "Entity":

(a) means:

(i) a business corporation;

(ii) a nonprofit corporation;

(iii) a general partnership, including a limited liability partnership;

(iv) a limited partnership, including a limited liability limited partnership;

(v) a limited liability company;

(vi) a limited cooperative association;

(vii) an unincorporated nonprofit association;

(viii) a statutory trust, business trust, or common-law business trust; or

(ix) any other person that has:

(A) a legal existence separate from any interest holder of that person; or

(B) the power to acquire an interest in real property in its own name; and

(b) does not include:

(i) an individual;

(ii) a trust with a predominantly donative purpose or a charitable trust;

(iii) an association or relationship that is not a partnership solely by reason of Subsection 48-1d-202(3) or a similar provision of the law of another jurisdiction;

(iv) a decedent's estate; or

(v) a government or a governmental subdivision, agency, or instrumentality.

(12) "Filing entity" means an entity whose formation requires the filing of a public organic record.

(13) "Foreign," with respect to an entity, means an entity governed as to its internal affairs by the law of a jurisdiction other than this state.

(14) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

(a) receive or demand access to information concerning, or the books and records of, the entity;

(b) vote for or consent to the election of the governors of the entity; or

(c) receive notice of or vote on or consent to an issue involving the internal affairs of the entity.

(15) "Governor" means:

(a) a director of a business corporation;

(b) a director or trustee of a nonprofit corporation;

(c) a general partner of a general partnership;

(d) a general partner of a limited partnership;

- (e) a manager of a manager-managed limited liability company;
- (f) a member of a member-managed limited liability company;
- (g) a director of a limited cooperative association;
- (h) a manager of an unincorporated nonprofit association;
- (i) a trustee of a statutory trust, business trust, or common-law business trust; or
- (j) any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(16) "Interest" means:

- (a) a share in a business corporation;
- (b) a membership in a nonprofit corporation;
- (c) a partnership interest in a general partnership;
- (d) a partnership interest in a limited partnership;
- (e) a membership interest in a limited liability company;
- (f) a member's interest in a limited cooperative association;
- (g) a membership in an unincorporated nonprofit association;
- (h) a beneficial interest in a statutory trust, business trust, or common-law business trust; or
- (i) a governance interest or distributional interest in any other type of unincorporated entity.

(17) "Interest exchange" means a transaction authorized by Sections 48-3a-1031 through 48-3a-1036.

(18) "Interest holder" means:

- (a) a shareholder of a business corporation;
- (b) a member of a nonprofit corporation;
- (c) a general partner of a general partnership;
- (d) a general partner of a limited partnership;
- (e) a limited partner of a limited partnership;
- (f) a member of a limited liability company;
- (g) a member of a limited cooperative association;
- (h) a member of an unincorporated nonprofit association;
- (i) a beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust; or
- (j) any other direct holder of an interest.

(19) "Interest holder liability" means:

- (a) personal liability for a liability of an entity which is imposed on a person:
 - (i) solely by reason of the status of the person as an interest holder; or
 - (ii) by the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or
- (b) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.

(20) "Merger" means a transaction authorized by Sections 48-3a-1021 through 48-3a-1026.

(21) "Merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective.

(22) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.

(23) "Organic rules" means the public organic record and private organic rules of an entity.

(24) "Plan" means a plan of merger, plan of interest exchange, plan of conversion, or plan of domestication.

(25) "Plan of conversion" means a plan under Section 48-3a-1042.

(26) "Plan of domestication" means a plan under Section 48-3a-1052.

(27) "Plan of interest exchange" means a plan under Section 48-3a-1032.

(28) "Plan of merger" means a plan under Section 48-3a-1022.

(29) "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. The term includes:

(a) the bylaws of a business corporation;

(b) the bylaws of a nonprofit corporation;

(c) the partnership agreement of a general partnership;

(d) the partnership agreement of a limited partnership;

(e) the operating agreement of a limited liability company;

(f) the bylaws of a limited cooperative association;

(g) the governing principles of an unincorporated nonprofit association; and

(h) the trust instrument of a statutory trust or similar rules of a business trust or common-law business trust.

(30) "Protected agreement" means:

(a) a record evidencing indebtedness and any related agreement in effect on January 1, 2014;

(b) an agreement that is binding on an entity on January 1, 2014;

(c) the organic rules of an entity in effect on January 1, 2014; or

(d) an agreement that is binding on any of the governors or interest holders of an entity on January 1, 2014.

(31) "Public organic record" means the record the filing of which by the division is required to form an entity and any amendment to or restatement of that record. The term includes:

(a) the articles of incorporation of a business corporation;

(b) the articles of incorporation of a nonprofit corporation;

(c) the certificate of limited partnership of a limited partnership;

(d) the certificate of organization of a limited liability company;

(e) the articles of organization of a limited cooperative association; and

(f) the certificate of trust of a statutory trust or similar record of a business trust.

(32) "Registered foreign entity" means a foreign entity that is registered to do business in this state pursuant to a record filed by the division.

(33) "Statement of conversion" means a statement under Section 48-3a-1045.

(34) "Statement of domestication" means a statement under Section 48-3a-1055.

(35) "Statement of interest exchange" means a statement under Section 48-3a-1035.

(36) "Statement of merger" means a statement under Section 48-3a-1025.

(37) "Surviving entity" means the entity that continues in existence after or is created by a merger.

(38) "Type of entity" means a generic form of entity:

(a) recognized at common law; or

(b) formed under an organic law, whether or not some entities formed under that organic law are subject to provisions of that law that create different categories of the form of entity.

Enacted by Chapter 412, 2013 General Session

48-3a-1002. Relationship of part to other laws.

This part does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this chapter.

Enacted by Chapter 412, 2013 General Session

48-3a-1003. Required notice or approval.

(1) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger must give the notice or obtain the approval to be a party to an interest exchange, conversion, or domestication.

(2) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this part becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the district court specifying the disposition of the property.

(3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a merging entity that is not the surviving entity and that takes effect or remains payable after the merger inures to the surviving entity. A trust obligation that would govern property if transferred to the nonsurviving entity applies to property that is transferred to the surviving entity under this section.

Enacted by Chapter 412, 2013 General Session

48-3a-1004. Status of filings.

A filing under this part signed by a domestic entity becomes part of the public organic record of the entity if the entity's organic law provides that similar filings under that law become part of the public organic record of the entity.

Enacted by Chapter 412, 2013 General Session

48-3a-1005. Nonexclusivity.

The fact that a transaction under this part produces a certain result does not

preclude the same result from being accomplished in any other manner permitted by law other than this part.

Enacted by Chapter 412, 2013 General Session

48-3a-1006. References to external facts.

A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

Enacted by Chapter 412, 2013 General Session

48-3a-1007. Alternative means of approval of transactions.

Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this part by the unanimous vote or consent of its interest holders satisfies the requirements of this part for approval of the transaction.

Enacted by Chapter 412, 2013 General Session

48-3a-1008. Appraisal rights.

(1) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

(a) the organic law permits the organic rules to limit the availability of appraisal rights; and

(b) the organic rules provide such a limit.

(2) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this part to the extent provided in:

(a) the entity's organic rules; or

(b) the plan.

Enacted by Chapter 412, 2013 General Session

48-3a-1021. Merger authorized.

(1) By complying with Sections 48-3a-1021 through 48-3a-1026:

(a) one or more domestic limited liability companies may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and

(b) two or more foreign entities may merge into a domestic limited liability company.

(2) By complying with the provisions of Sections 48-3a-1021 through 48-3a-1026 applicable to foreign entities, a foreign entity may be a party to a merger under Sections 48-3a-1021 through 48-3a-1026 or may be the surviving entity in such a

merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-3a-1022. Plan of merger.

(1) A domestic limited liability company may become a party to a merger under Sections 48-3a-1021 through 48-3a-1026 by approving a plan of merger. The plan must be in a record and contain:

(a) as to each merging entity, its name, jurisdiction of formation, and type of entity;

(b) if the surviving entity is to be created in the merger, a statement to that effect and the entity's name, jurisdiction of formation, and type of entity;

(c) the manner of converting the interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(d) if the surviving entity exists before the merger, any proposed amendments to its public organic record, if any, or to its private organic rules that are, or are proposed to be, in a record;

(e) if the surviving entity is to be created in the merger, its proposed public organic record, if any, and the full text of its private organic rules that are proposed to be in a record;

(f) the other terms and conditions of the merger; and

(g) any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity.

(2) In addition to the requirements of Subsection (1), a plan of merger may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-3a-1023. Approval of merger.

(1) A plan of merger is not effective unless it has been approved:

(a) by a domestic merging limited liability company, by all the members of the limited liability company entitled to vote on or consent to any matter; and

(b) in a record, by each member of a domestic merging limited liability company that will have interest holder liability for debts, obligations, and other liabilities that arise after the merger becomes effective, unless:

(i) the operating agreement of the limited liability company in a record provides for the approval of a merger in which some or all of its members become subject to interest holder liability by the vote or consent of fewer than all the members; and

(ii) the member consented in a record to or voted for that provision of the operating agreement or became a member after the adoption of that provision.

(2) A merger involving a domestic merging entity that is not a limited liability company is not effective unless the merger is approved by that entity in accordance with its organic law.

(3) A merger involving a foreign merging entity is not effective unless the merger

is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-3a-1024. Amendment or abandonment of plan of merger.

(1) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(2) A domestic merging limited liability company may approve an amendment of a plan of merger:

(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) by the managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

(ii) the public organic record, if any, or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(iii) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.

(3) After a plan of merger has been approved and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging limited liability company may abandon the plan in the same manner as the plan was approved.

(4) If a plan of merger is abandoned after a statement of merger has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by a party to the plan, must be delivered to the division for filing before the statement of merger becomes effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of each party to the plan of merger;

(b) the date on which the statement of merger was delivered to the division for filing; and

(c) a statement that the merger has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-3a-1025. Statement of merger.

(1) A statement of merger must be signed by each merging entity and delivered to the division for filing.

(2) A statement of merger must contain:

(a) the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;

(b) the name, jurisdiction of formation, and type of entity of the surviving entity;

(c) a statement that the merger was approved by each domestic merging entity, if any, in accordance with Sections 48-3a-1021 through 48-3a-1026 and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;

(d) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger;

(e) if the surviving entity is created by the merger and is a domestic filing entity, its public organic record, as an attachment;

(f) if the surviving entity is created by the merger and is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(g) if the surviving entity is a foreign entity that is not a registered foreign entity, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-3a-1026(5).

(3) In addition to the requirements of Subsection (2), a statement of merger may contain any other provision not prohibited by law.

(4) If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, but the public organic record does not need to be signed.

(5) A plan of merger that is signed by all the merging entities and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this Subsection (5), references in this part to a statement of merger refer to the plan of merger filed under this Subsection (5).

Enacted by Chapter 412, 2013 General Session

48-3a-1026. Effect of merger.

(1) When a merger becomes effective:

(a) the surviving entity continues or comes into existence;

(b) each merging entity that is not the surviving entity ceases to exist;

(c) all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;

(d) all debts, obligations, and other liabilities of each merging entity are debts, obligations, and other liabilities of the surviving entity;

(e) except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

(f) if the surviving entity exists before the merger:

(i) all its property continues to be vested in it without transfer, reversion, or impairment;

(ii) it remains subject to all its debts, obligations, and other liabilities; and

(iii) all its rights, privileges, immunities, powers, and purposes continue to be vested in it;

(g) the name of the surviving entity may be substituted for the name of any

merging entity that is a party to any pending action or proceeding;

(h) if the surviving entity exists before the merger:

(i) its public organic record, if any, is amended as provided in the statement of merger; and

(ii) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;

(i) if the surviving entity is created by the merger:

(i) its public organic record, if any, is effective; and

(ii) its private organic rules are effective; and

(j) the interests in each merging entity which are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under Section 48-3a-1008 and the merging entity's organic law.

(2) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the merging entity.

(3) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and becomes subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that arise after the merger becomes effective.

(4) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:

(a) The merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective.

(b) The person does not have interest holder liability under the organic law of the domestic merging entity for any debt, obligation, or other liability that arises after the merger becomes effective.

(c) The organic law of the domestic merging entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under Subsection (4)(a) as if the merger had not occurred and the surviving entity were the domestic merging entity.

(d) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the organic rules of the domestic merging entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the merger had not occurred.

(5) When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging entity as provided in Section 16-17-301.

(6) When a merger becomes effective, the registration to do business in this state of any foreign merging entity that is not the surviving entity is canceled.

Enacted by Chapter 412, 2013 General Session

48-3a-1031. Interest exchange authorized.

(1) By complying with Sections 48-3a-1031 through 48-3a-1036:

(a) a domestic limited liability company may acquire all of one or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; or

(b) all of one or more classes or series of interests of a domestic limited liability company may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(2) By complying with the provisions of Sections 48-3a-1031 through 48-3a-1036 applicable to foreign entities, a foreign entity may be the acquiring or acquired entity in an interest exchange under Sections 48-3a-1031 through 48-3a-1036 if the interest exchange is authorized by the law of the foreign entity's jurisdiction of formation.

(3) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic limited liability company is the acquired entity as if the interest exchange were a merger until the provision is amended after January 1, 2014.

Enacted by Chapter 412, 2013 General Session

48-3a-1032. Plan of interest exchange.

(1) A domestic limited liability company may be the acquired entity in an interest exchange under Sections 48-3a-1031 through 48-3a-1036 by approving a plan of interest exchange. The plan must be in a record and contain:

(a) the name of the acquired entity;

(b) the name, jurisdiction of formation, and type of entity of the acquiring entity;

(c) the manner of converting the interests in the acquired entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(d) any proposed amendments to the certificate of organization or operating agreement that are, or are proposed to be, in a record of the acquired entity;

(e) the other terms and conditions of the interest exchange; and

(f) any other provision required by the law of this state or the operating agreement of the acquired entity.

(2) In addition to the requirements of Subsection (1), a plan of interest exchange may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-3a-1033. Approval of interest exchange.

- (1) A plan of interest exchange is not effective unless it has been approved:
 - (a) by all the members of a domestic acquired limited liability company entitled to vote on or consent to any matter; and
 - (b) in a record, by each member of the domestic acquired limited liability company that will have interest holder liability for debts, obligations, and other liabilities that arise after the interest exchange becomes effective, unless:
 - (i) the operating agreement of the limited liability company in a record provides for the approval of an interest exchange or a merger in which some or all of its members become subject to interest holder liability by the vote or consent of fewer than all the members; and
 - (ii) the member consented in a record to or voted for that provision of the operating agreement or became a member after the adoption of that provision.
- (2) An interest exchange involving a domestic acquired entity that is not a limited liability company is not effective unless it is approved by the domestic entity in accordance with its organic law.
- (3) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.
- (4) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

Enacted by Chapter 412, 2013 General Session

48-3a-1034. Amendment or abandonment of plan of interest exchange.

- (1) A plan of interest exchange may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.
- (2) A domestic acquired limited liability company may approve an amendment of a plan of interest exchange:
 - (a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
 - (b) by the managers or members of the domestic acquired limited liability company in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:
 - (i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the members of the acquired limited liability company under the plan;
 - (ii) the certificate of organization or operating agreement of the acquired limited liability company that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the members of the acquired limited liability company under this chapter or the operating agreement; or
 - (iii) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.
- (3) After a plan of interest exchange has been approved and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic acquired limited liability company may

abandon the plan in the same manner as the plan was approved.

(4) If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by the acquired limited liability company, must be delivered to the division for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect on filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:

- (a) the name of the acquired limited liability company;
- (b) the date on which the statement of interest exchange was delivered to the division for filing; and
- (c) a statement that the interest exchange has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-3a-1035. Statement of interest exchange.

(1) A statement of interest exchange must be signed by a domestic acquired limited liability company and delivered to the division for filing.

(2) A statement of interest exchange must contain:

- (a) the name of the acquired limited liability company;
- (b) the name, jurisdiction of formation, and type of entity of the acquiring entity;
- (c) a statement that the plan of interest exchange was approved by the acquired limited liability entity in accordance with Sections 48-3a-1031 through 48-3a-1036; and
- (d) any amendments to the acquired limited liability company's certificate of organization approved as part of the plan of interest exchange.

(3) In addition to the requirements of Subsection (2), a statement of interest exchange may contain any other provision not prohibited by law.

(4) A plan of interest exchange that is signed by a domestic acquired limited liability company and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of interest exchange and on filing has the same effect. If a plan of interest exchange is filed as provided in this Subsection (4), references in this part to a statement of interest exchange refer to the plan of interest exchange filed under this Subsection (4).

Enacted by Chapter 412, 2013 General Session

48-3a-1036. Effect of interest exchange.

(1) When an interest exchange in which the acquired entity is a domestic limited liability company becomes effective:

- (a) the interests in a domestic limited liability company that are the subject of the interest exchange cease to exist or are converted or exchanged, and the members holding those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under Section 48-3a-1008;
- (b) the acquiring entity becomes the interest holder of the interests in the acquired limited liability company stated in the plan of interest exchange to be acquired

by the acquiring entity;

(c) the certificate of organization of the acquired limited liability company is amended as provided in the statement of interest exchange; and

(d) the provisions of the operating agreement of the acquired limited liability company that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange.

(2) Except as otherwise provided in the operating agreement of a domestic acquired limited liability company, the interest exchange does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the acquired limited liability company.

(3) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to a domestic acquired limited liability company and becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the interest exchange becomes effective.

(4) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired limited liability company with respect to which the person had interest holder liability is as follows:

(a) The interest exchange does not discharge any interest holder liability to the extent the interest holder liability arose before the interest exchange became effective.

(b) The person does not have interest holder liability for any debt, obligation, or other liability that arises after the interest exchange becomes effective.

(c) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the operating agreement of the acquired limited liability company with respect to any interest holder liability preserved under Subsection (4)(a) as if the interest exchange had not occurred.

Enacted by Chapter 412, 2013 General Session

48-3a-1041. Conversion authorized.

(1) By complying with Sections 48-3a-1041 through 48-3a-1046, a domestic limited liability company may become:

(a) a domestic entity that is a different type of entity; or

(b) a foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign jurisdiction.

(2) By complying with the provisions of Sections 48-3a-1041 through 48-3a-1046 applicable to foreign entities, a foreign entity that is not a foreign limited liability company may become a domestic limited liability company if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(3) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after January 1, 2014.

Enacted by Chapter 412, 2013 General Session

48-3a-1042. Plan of conversion.

(1) A domestic limited liability company may convert to a different type of entity under Sections 48-3a-1041 through 48-3a-1046 by approving a plan of conversion.

The plan must be in a record and contain:

- (a) the name of the converting limited liability company;
- (b) the name, jurisdiction of formation, and type of entity of the converted entity;
- (c) the manner of converting the interests in the converting limited liability company into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
- (d) the proposed public organic record of the converted entity if it will be a filing entity;
- (e) the full text of the private organic rules of the converted entity that are proposed to be in a record;
- (f) the other terms and conditions of the conversion; and
- (g) any other provision required by the law of this state or the operating agreement of the converting limited liability company.

(2) In addition to the requirements of Subsection (1), a plan of conversion may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-3a-1043. Approval of conversion.

(1) A plan of conversion is not effective unless it has been approved:

(a) by a domestic converting limited liability company by all the members of the limited liability company entitled to vote on or consent to any matter; and

(b) in a record, by each member of a domestic converting limited liability company that will have interest holder liability for debts, obligations, and other liabilities that arise after the conversion becomes effective:

(i) the operating agreement of the limited liability company provides in a record for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all the interest holders; and

(ii) the member voted for or consented in a record to that provision of the operating agreement or became a member after the adoption of that provision.

(2) A conversion involving a domestic converting entity that is not a limited liability company is not effective unless it is approved by the domestic converting entity in accordance with its organic law.

(3) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-3a-1044. Amendment or abandonment of plan of conversion.

(1) A plan of conversion of a domestic converting limited liability company may be amended:

(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) by the managers or members of the entity in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the converting entity under the plan;

(ii) the public organic record or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(iii) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(2) After a plan of conversion has been approved by a domestic converting limited liability company and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting limited liability company may abandon the plan in the same manner as the plan was approved.

(3) If a plan of conversion is abandoned after a statement of conversion has been delivered to the division for filing and before the statement of conversion becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the division for filing before the time the statement of conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of the converting limited liability company;

(b) the date on which the statement of conversion was delivered to the division for filing; and

(c) a statement that the conversion has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-3a-1045. Statement of conversion.

(1) A statement of conversion must be signed by the converting entity and delivered to the division for filing.

(2) A statement of conversion must contain:

(a) the name, jurisdiction of formation, and type of entity of the converting entity;

(b) the name, jurisdiction of formation, and type of entity of the converted entity;

(c) if the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with Sections 48-3a-1041 through 48-3a-1046 or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of formation;

(d) if the converted entity is a domestic filing entity, the text of its public organic record, as an attachment;

(e) if the converted entity is a domestic limited liability partnership, the text of its statement of qualification, as an attachment; and

(f) if the converted entity is a foreign entity that is not a registered foreign entity, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-3a-1046(5).

(3) In addition to the requirements of Subsection (2), a statement of conversion may contain any other provision not prohibited by law.

(4) If a converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, but the public organic record does not need to be signed.

(5) A plan of conversion that is signed by a domestic converting entity and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this Subsection (5), references in this part to a statement of conversion refer to the plan of conversion filed under this Subsection (5).

Enacted by Chapter 412, 2013 General Session

48-3a-1046. Effect of conversion.

(1) When a conversion in which the converted entity is a domestic limited liability company becomes effective:

(a) the converted entity is:

(i) organized under and subject to this chapter; and

(ii) the same entity without interruption as the converting entity;

(b) all property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(c) all debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

(d) except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(e) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(f) the provisions of the operating agreement of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective; and

(g) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 48-3a-1008 and the converting entity's organic law.

(2) Except as otherwise provided in the operating agreement of a domestic converting limited liability company, the conversion does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the converting entity.

(3) When a conversion becomes effective, a person that did not have interest

holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the conversion becomes effective.

(4) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic limited liability company with respect to which the person had interest holder liability is as follows:

(a) the conversion does not discharge any interest holder liability to the extent the interest holder liability arose before the conversion became effective;

(b) the person does not have interest holder liability for any debt, obligation, or other liability that arises after the conversion becomes effective; and

(c) the person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the operating agreement of the converting entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the conversion had not occurred.

(5) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and liabilities as provided in Section 16-17-301.

(6) If the converting entity is a registered foreign entity, the registration to do business in this state of the converting entity is canceled when the conversion becomes effective.

(7) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

Enacted by Chapter 412, 2013 General Session

48-3a-1051. Domestication authorized.

(1) By complying with Sections 48-3a-1051 through 48-3a-1056, a domestic limited liability company may become a foreign limited liability company if the domestication is authorized by the law of the foreign jurisdiction.

(2) By complying with the provisions of Sections 48-3a-1051 through 48-3a-1056 applicable to foreign limited liability companies, a foreign limited liability company may become a domestic limited liability company if the domestication is authorized by the law of the foreign limited liability company's jurisdiction of formation.

(3) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to a domestication, the provision applies to a domestication of the limited liability company as if the domestication were a merger until the provision is amended after January 1, 2014.

Enacted by Chapter 412, 2013 General Session

48-3a-1052. Plan of domestication.

(1) A domestic limited liability company may become a foreign limited liability company in a domestication by approving a plan of domestication. The plan must be in a record and contain:

- (a) the name of the domesticating limited liability company;
 - (b) the name and jurisdiction of formation of the domesticated limited liability company;
 - (c) the manner of converting the interests in the domesticating limited liability company into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
 - (d) the proposed certificate of organization of the domesticated limited liability company;
 - (e) the full text of the provisions of the operating agreement of the domesticated limited liability company that are proposed to be in a record;
 - (f) the other terms and conditions of the domestication; and
 - (g) any other provision required by the law of this state or the operating agreement of the domesticating limited liability company.
- (2) In addition to the requirements of Subsection (1), a plan of domestication may contain any other provision not prohibited by law.

Enacted by Chapter 412, 2013 General Session

48-3a-1053. Approval of domestication.

- (1) A plan of domestication of a domestic domesticating limited liability company is not effective unless it has been approved:
- (a) by all the members entitled to vote on or consent to any matter; and
 - (b) in a record, by each member that will have interest holder liability for debts, obligations, and other liabilities that arise after the domestication becomes effective, unless:
 - (i) the operating agreement of the entity in a record provides for the approval of a domestication or merger in which some or all of its members become subject to interest holder liability by the vote or consent of fewer than all the members; and
 - (ii) the member voted for or consented in a record to that provision of the operating agreement or became an interest holder after the adoption of that provision.
- (2) A domestication of a foreign domesticating limited liability company is not effective unless it is approved in accordance with the law of the foreign limited liability company's jurisdiction of formation.

Enacted by Chapter 412, 2013 General Session

48-3a-1054. Amendment or abandonment of plan of domestication.

- (1) A plan of domestication of a domestic domesticating limited liability company may be amended:
- (a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
 - (b) by the managers or members of the limited liability company in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:
 - (i) the amount or kind of interests, securities, obligations, money, other property,

rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the domesticating limited liability company under the plan;

(ii) the certificate of organization or operating agreement of the domesticated limited liability company that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the members of the domesticated limited liability company under its organic law or operating agreement; or

(iii) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(2) After a plan of domestication has been approved by a domestic domesticating limited liability company and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating limited liability company may abandon the plan in the same manner as the plan was approved.

(3) If a plan of domestication is abandoned after a statement of domestication has been delivered to the division for filing and before the statement of domestication becomes effective, a statement of abandonment, signed by the domesticating limited liability company, must be delivered to the division for filing before the time the statement of domestication becomes effective. The statement of abandonment takes effect on filing, and the domestication is abandoned and does not become effective.

The statement of abandonment must contain:

- (a) the name of the domesticating limited liability company;
- (b) the date on which the statement of domestication was delivered to the division for filing; and
- (c) a statement that the domestication has been abandoned in accordance with this section.

Enacted by Chapter 412, 2013 General Session

48-3a-1055. Statement of domestication.

(1) A statement of domestication must be signed by the domesticating limited liability company and delivered to the division for filing.

(2) A statement of domestication must contain:

- (a) the name and jurisdiction of formation of the domesticating limited liability company;
- (b) the name and jurisdiction of formation of the domesticated limited liability company;
- (c) if the domesticating limited liability company is a domestic limited liability company, a statement that the plan of domestication was approved in accordance with Sections 48-3a-1051 through 48-3a-1056 or, if the domesticating limited liability company is a foreign limited liability company, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation;
- (d) the certificate of organization of the domesticated limited liability company, as an attachment; and
- (e) if the domesticated foreign limited liability company is not a registered foreign

limited liability company, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-3a-1056(5).

(3) In addition to the requirements of Subsection (2), a statement of domestication may contain any other provision not prohibited by law.

(4) The certificate of organization of a domesticated domestic limited liability company must satisfy the requirements of the law of this state, but the certificate does not need to be signed.

(5) A plan of domestication that is signed by a domesticating domestic limited liability company and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this Subsection (5), references in this part to a statement of domestication refer to the plan of domestication filed under this Subsection (5).

Enacted by Chapter 412, 2013 General Session

48-3a-1056. Effect of domestication.

(1) When a domestication becomes effective:

(a) the domesticated limited liability company is:

(i) organized under and subject to the organic law of the domesticated limited liability company; and

(ii) the same entity without interruption as the domesticating limited liability company;

(b) all property of the domesticating limited liability company continues to be vested in the domesticated limited liability company without transfer, reversion, or impairment;

(c) all debts, obligations, and other liabilities of the domesticating limited liability company continue as debts, obligations, and other liabilities of the domesticated limited liability company;

(d) except as otherwise provided by law or the plan of domestication, all the rights, privileges, immunities, powers, and purposes of the domesticating limited liability company remain in the domesticated limited liability company;

(e) the name of the domesticated limited liability company may be substituted for the name of the domesticating limited liability company in any pending action or proceeding;

(f) the certificate of organization of the domesticated limited liability company is effective;

(g) the provisions of the operating agreement of the domesticated limited liability company that are to be in a record, if any, approved as part of the plan of domestication are effective; and

(h) the interests in the domesticating limited liability company are converted to the extent and as approved in connection with the domestication, and the members of the domesticating limited liability company are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 48-3a-1008.

(2) Except as otherwise provided in the organic law or operating agreement of

the domesticating limited liability company, the domestication does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the domesticating limited liability company.

(3) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating limited liability company and becomes subject to interest holder liability with respect to a domestic limited liability company as a result of the domestication has interest holder liability only to the extent provided by the organic law of the domestic limited liability company and only for those debts, obligations, and other liabilities that arise after the domestication becomes effective.

(4) When a domestication becomes effective:

(a) The domestication does not discharge any interest holder liability under this chapter to the extent the interest holder liability arose before the domestication became effective.

(b) A person does not have interest holder liability under this part for any debts, obligations, and other liabilities that arise after the domestication becomes effective.

(c) A person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the operating agreement of a domestic domesticating limited liability company with respect to any interest holder liability preserved under Subsection (4)(a) as if the domestication had not occurred.

(5) When a domestication becomes effective, a foreign limited liability company that is the domesticated limited liability company may be served with process in this state for the collection and enforcement of any of its debts, obligations, and liabilities as provided in Section 16-17-301.

(6) If the domesticating limited liability company is a registered foreign limited liability company, the registration of the foreign limited liability company is canceled when the domestication becomes effective.

(7) A domestication does not require the limited liability company to wind up its affairs and does not constitute or cause the dissolution of the company.

Enacted by Chapter 412, 2013 General Session

48-3a-1101. Definitions.

As used in this part:

(1) "Professional services" means a personal service provided by:

(a) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, or a subsequent law regulating the practice of public accounting;

(b) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, or a subsequent law regulating the practice of architecture;

(c) an attorney granted the authority to practice law by the:

(i) Utah Supreme Court; or

(ii) one or more of the following that licenses or regulates the authority to practice law in a state or territory of the United States other than Utah:

(A) a supreme court;

(B) a court other than a supreme court;

(C) an agency;

- (D) an instrumentality; or
- (E) a regulating board;
- (d) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, or any subsequent law regulating the practice of chiropractics;
- (e) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, or a subsequent law regulating the practice of dentistry;
- (f) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, or a subsequent law regulating the practice of engineers and land surveyors;
- (g) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, or a subsequent law regulating the practice of naturopathy;
- (h) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act, or a subsequent law regulating the practice of nursing;
- (i) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, or a subsequent law regulating the practice of optometry;
- (j) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, or a subsequent law regulating the practice of osteopathy;
- (k) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act, or a subsequent law regulating the practice of pharmacy;
- (l) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, or a subsequent law regulating the practice of medicine;
- (m) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy Practice Act, or a subsequent law regulating the practice of physical therapy;
- (n) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, or a subsequent law regulating the practice of podiatry;
- (o) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, or any subsequent law regulating the practice of psychology;
- (p) a principal broker, associate broker, or sales agent holding a license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, or a subsequent law regulating the sale, exchange, purchase, rental, or leasing of real estate;
- (q) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, or a subsequent law regulating the practice of social work;
- (r) a mental health therapist holding a license under Title 58, Chapter 60, Mental Health Professional Practice Act, or a subsequent law regulating the practice of mental health therapy;
- (s) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, or a subsequent law regulating the practice of veterinary medicine; or
- (t) an individual licensed, certified, or registered under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act, or a subsequent law regulating the practice of appraising real estate.

(2) "Regulating board" means the entity organized pursuant to state law that licenses and regulates the practice of the profession that a limited liability company is

organized to provide.

Enacted by Chapter 412, 2013 General Session

48-3a-1102. Application of this part.

(1) If a conflict arises between this part and another provision of this chapter, this part controls.

(2) Notwithstanding the other provisions of this part, on and after January 1, 2016:

(a) a professional services company may not designate series of transferable interests; and

(b) a limited liability company may not form a professional services company as a series of the limited liability company.

Enacted by Chapter 412, 2013 General Session

48-3a-1103. Additional requirements for certificate of organization.

The certificate of organization of a professional services company shall:

(1) comply with Section 48-3a-201; and

(2) contain the following:

(a) a name consistent with Section 48-3a-1104;

(b) a description of the profession to be practiced through the professional services company; and

(c) notwithstanding Section 48-3a-201, the name and street address of each member or manager of the professional services company.

Enacted by Chapter 412, 2013 General Session

48-3a-1104. Name limitations.

(1) The name of a domestic professional services company and of a foreign professional services company authorized to transact business in this state, in addition to complying with Sections 48-3a-108 and 48-3a-906:

(a) may not contain language stating or implying that it is formed for a purpose other than that authorized by:

(i) its certificate of organization; or

(ii) Section 48-3a-1106;

(b) must conform with any rule made by the regulating board having jurisdiction over a professional service described in the professional services company's certificate of organization; and

(c) in lieu of the requirement of Subsection 48-3a-108(1), must contain the words "professional limited liability company" or the abbreviations "P.L.L.C." or "PLLC" in:

(i) its certificate of organization; and

(ii) a report or document filed with the division.

(2) Notwithstanding Subsection (1)(c), a professional services company may hold itself out to the public under a name that does not contain the words "professional

limited liability company" or the abbreviations "P.L.L.C." or "PLLC" if that name complies with Subsection 48-3a-108(1).

(3) Sections 48-3a-108 and 48-3a-906 do not prevent the use of a name otherwise prohibited by those sections if the name is:

(a) the personal name of an individual member or individual former member of the professional services company; or

(b) the name of an individual who was associated with a predecessor of the professional services company.

Enacted by Chapter 412, 2013 General Session

48-3a-1105. Providing a professional service.

(1) Subject to Section 48-3a-1106, a professional services company may provide a professional service in this state only through an individual licensed or otherwise authorized in this state to provide the professional service.

(2) Subsection (1) does not:

(a) require an individual employed by a professional services company to be licensed to perform a service for the professional services company if a license is not otherwise required;

(b) prohibit a licensed individual from providing a professional service in the individual's professional capacity although the individual is a member, manager, employee, or agent of a professional services company; or

(c) prohibit an individual licensed in another state from providing a professional service for a professional services company in this state if not prohibited by the regulating board.

Enacted by Chapter 412, 2013 General Session

48-3a-1106. Limit of one profession.

(1) A professional services company organized to provide a professional service under this part may provide only:

(a) one specific type of professional service; and

(b) services ancillary to the professional service described in Subsection (1)(a).

(2) A professional services company organized to provide a professional service under this part may not engage in a business other than to provide:

(a) the professional service that it was organized to provide; and

(b) services ancillary to the professional service described in Subsection (2)(a).

(3) Notwithstanding Subsections (1) and (2), a professional services company may:

(a) own real and personal property necessary or appropriate for providing the type of professional service it was organized to provide; and

(b) invest the professional services company's money in one or more of the following:

(i) real estate;

(ii) mortgages;

(iii) stocks;

- (iv) bonds; or
- (v) another type of investment.

Enacted by Chapter 412, 2013 General Session

48-3a-1107. Activity limitations.

A professional services company may not do anything that an individual licensed to practice the profession that the professional services company is organized to provide is prohibited from doing.

Enacted by Chapter 412, 2013 General Session

48-3a-1108. This part does not limit regulating board.

This part does not restrict the authority or duty of a regulating board to license an individual providing a professional service or the practice of the profession that is within the jurisdiction of the regulating board, notwithstanding that the individual:

- (1) is a member, manager, or employee of a professional services company; or
- (2) provides the professional service or engages in the practice of the profession through a professional services company.

Enacted by Chapter 412, 2013 General Session

48-3a-1109. Member or manager of a professional services company.

A professional services company organized to provide a professional service:

- (1) may include a member, manager, or employee who is authorized under the laws of the jurisdiction where the member, manager, or employee resides to provide a similar professional service;
- (2) may include a member who is not licensed or registered by the state to provide the professional service to the extent allowed by the applicable licensing or registration act relating to the professional service; and
- (3) may render a professional service in this state only through a member, manager, or employee who is licensed or registered by this state to render the professional service.

Enacted by Chapter 412, 2013 General Session

48-3a-1110. Restriction on transfer by member.

(1) Except as provided in Subsections (2) and (3), a member of a professional services company may sell or transfer the member's interest in the professional services company only to:

- (a) the professional services company; or
- (b) an individual who is licensed or registered by this state to provide the same type of professional service as the professional service for which the professional services company is organized, or who otherwise satisfies the requirements of Subsection 48-3a-1109(1) or (2).

(2) Upon the death or incapacity of a member of a professional services

company, the member's interest in the professional services company may be transferred to the personal representative or estate of the deceased or incapacitated member.

(3) The person to whom an interest is transferred under Subsection (2) may continue to hold the interest for a reasonable period, but may not participate in a decision concerning the providing of a professional service.

Enacted by Chapter 412, 2013 General Session

48-3a-1111. Purchase of interest upon death, incapacity, or disqualification of member.

(1) Subject to this part, one or more of the following may provide for the purchase of a member's interest in a professional services company upon the death, incapacity, or disqualification of the member:

- (a) the certificate of organization;
- (b) the operating agreement; or
- (c) a private agreement.

(2) In the absence of a provision described in Subsection (1), a professional services company shall purchase the interest of a member who is deceased, incapacitated, or no longer qualified to own an interest in the professional services company within 90 days after the day on which the professional services company is notified of the death, incapacity, or disqualification.

(3) If a professional services company purchases a member's interest under Subsection (2), the professional services company shall purchase the interest at a price that is the reasonable fair market value as of the date of death, incapacity, or disqualification.

(4) If a professional services company fails to purchase a member's interest as required by Subsection (2) at the end of the 90-day period described in Subsection (2), one of the following may bring an action in the district court of the county in which the principal office or place of practice of the professional services company is located to enforce Subsection (2):

- (a) the personal representative of a deceased member;
- (b) the guardian or conservator of an incapacitated member; or
- (c) the disqualified member.

(5) A court in which an action is brought under Subsection (4) may:

(a) award the person bringing the action the reasonable fair market value of the interest; or

(b) within its jurisdiction, order the liquidation of the professional services company.

(6) If a person described in Subsections (4)(a) through (c) is successful in an action under Subsection (4), the court shall award the person reasonable attorney's fees and costs.

Enacted by Chapter 412, 2013 General Session

48-3a-1112. Conversion to nonprofessional company.

- (1) A professional services company subject to this part converts into a limited liability company subject to this chapter, but not subject to this part on the day on which:
- (a) no member of the professional services company is licensed or registered for the professional service for which the professional services company is organized; or
 - (b) all members entitled to vote on or consent to any matter consent not to be a professional services company subject to this part.
- (2) A professional services company converted as provided in Subsection (1) shall upon the event described in Subsection (1) operate as and be treated as a limited liability company subject to this chapter, but not subject to this part.
- (3) A limited liability company resulting from a conversion under this section may reconvert to a professional services company:
- (a) upon at least one member of the limited liability company being licensed or registered for the professional service for which the limited liability company is organized; and
 - (b) each member of the limited liability company entitled to vote on or consent to any matter consents to reconvert the limited liability company to a professional services company subject to this part.
- (4) If a professional services company is converted or reconverted under this section, the professional services company shall file a certificate of amendment to the certificate of organization with the division within a reasonable time after the conversion or reconversion to reflect the changes.

Enacted by Chapter 412, 2013 General Session

48-3a-1201. Series of transferable interests.

- (1) An operating agreement may establish or provide for the establishment of a designated series of transferable interests having separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and, to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective. The name of each series must contain the name of the limited liability company and be distinguishable from the name of any other series.
- (2) Notwithstanding contrary provisions of this chapter, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of the limited liability company generally or any other series, if all of the following apply:
- (a) the series is established by or in accordance with the operating agreement;
 - (b) separate and distinct records are maintained for the series;
 - (c) the assets associated with the series are held and accounted for separately from the other assets of the limited liability company, including another series;
 - (d) the operating agreement or the agreement establishing the series provides for the limitation on liabilities of the series; and
 - (e) notice of the limitation on liability of the series is set forth in the limited liability company's certificate of organization in accordance with Section 48-3a-1202.
- (3) A series meeting all of the conditions of Subsection (2) shall:

(a) be treated as a separate entity to the extent set forth in the certificate of organization; and

(b) have the power and capacity to, in its own name, contract, hold title to property, grant liens and security interests, and sue and be sued.

(4) Notwithstanding the other provisions of this section:

(a) property and assets of a series may not be transferred to the limited liability company generally or another series if the transfer impairs the ability of the series releasing the property or assets to pay its debts existing at the time of the transfer unless fair value is given to the transferring series for the property or assets transferred; and

(b) a tax or other liability of the limited liability company generally or of a series may not be assigned by the series against which the tax or other liability is imposed to the limited liability company generally or to another series within the limited liability company if the assignment impairs a creditor's right and ability to fully collect an amount due when owed.

(5) Notwithstanding the other provisions of this part:

(a) a professional services company may not designate a series of transferable interests; and

(b) a limited liability company may not form a professional services company as a series of the limited liability company.

(6) Except to the extent modified by this part, the provisions of this chapter which are generally applicable to a limited liability company, and its managers, members, and transferees, shall be applicable to each series with respect to the operations of such a series.

Enacted by Chapter 412, 2013 General Session

48-3a-1202. Notice of limitation on liability of a series.

(1) Notice in a limited liability company's certificate of organization of the limitation on liabilities of a series as referenced in Subsection 48-3a-1201(2)(e) is sufficient for all purposes of this part whether or not the limited liability company has established a series at the time the notice is included in the certificate of organization.

(2) The notice of a limitation on liability of a series as referenced in Subsection 48-3a-1201(2)(e) is not required to reference a specific series.

(3) The filing by the division of the certificate of organization containing a notice of the limitation on liabilities of a series constitutes notice of the limitation on liabilities of the series.

Enacted by Chapter 412, 2013 General Session

48-3a-1203. Agreement to be liable.

Notwithstanding Section 48-3a-304, or a contrary provision in an operating agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations, or liabilities of one or more series.

Enacted by Chapter 412, 2013 General Session

48-3a-1204. Series related provisions in operating agreement.

(1) An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers, and duties as the operating agreement may provide.

(2) The operating agreement may provide for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members or managers associated with the series.

(3) An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or manager or class or group of members or managers, including all action to create under the provisions of the operating agreement a class or group of the series of membership interests that was not previously outstanding.

(4) An operating agreement may provide that any member or class or group of members associated with a series does not have voting rights.

(5) An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote on any matter separately or with all or any class or group of the members or managers associated with the series. Voting by members or managers associated with a series may be on any basis including:

- (a) a per capita basis;
- (b) a number basis;
- (c) on the basis of a financial interest; or
- (d) by class or group.

Enacted by Chapter 412, 2013 General Session

48-3a-1205. Management of a series.

(1) A series is member-managed unless the operating agreement:

- (a) expressly provides that:
 - (i) the series is or will be "manager-managed";
 - (ii) the series is or will be "managed by managers"; or
 - (iii) management of the series is or will be "vested in managers"; or
- (b) includes words of similar import.

(2) In a member-managed series, unless modified pursuant to Section 48-3a-1204, the following rules apply:

(a) The management and conduct of the series are vested in the members of the series.

(b) Each series member has equal rights in the management and conduct of the series' activities.

(c) A difference arising among series members as to a matter in the ordinary course of the activities of the series shall be decided by a majority of the series members.

(d) An act outside the ordinary course of the activities of the series may be undertaken only with the consent of all members of the series.

(e) The operating agreement may be amended only with the consent of all members of the series.

(3) In a manager-managed series, the following rules apply:

(a) Except as otherwise expressly provided in this chapter, any matter relating to the activities of the series is decided exclusively by the managers of the series.

(b) Each series manager has equal rights in the management and conduct of the activities of the series.

(c) A difference arising among managers of a series as to a matter in the ordinary course of the activities of the series shall be decided by a majority of the managers of the series.

(d) Unless modified pursuant to Section 48-3a-1204, the consent of all members of the series is required to:

(i) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the series' property, with or without the goodwill, outside the ordinary course of the series' activities;

(ii) approve a transaction under Part 10, Merger, Interest Exchange, Conversion, and Domestication;

(iii) undertake any other act outside the ordinary course of the series' activities; and

(iv) amend the operating agreement as it pertains to the series.

(e) A manager of the series may be chosen at any time by the consent of a majority of the members of the series and remains a manager of the series until a successor has been chosen, unless the series manager at an earlier time resigns, is removed, or dies, or, in the case of a series manager that is not an individual, terminates. A series manager may be removed at any time by the consent of a majority of the members without notice or cause.

(f) A person need not be a series member to be a manager of a series, but the dissociation of a series member that is also a series manager removes the person as a manager of the series. If a person that is both a series manager and a series member ceases to be a manager of the series, that cessation does not by itself dissociate the person as a member of the series.

(g) A person's ceasing to be a series manager does not discharge any debt, obligation, or other liability to the series or members of the series which the person incurred while a manager of the series.

(4) An action requiring the consent of members of a series under this chapter may be taken without a meeting, and a member of a series may appoint a proxy or other agent to consent or otherwise act for the series member by signing an appointing record, personally or by the series member's agent.

(5) The dissolution of a series does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the series loses the right to participate in management as a series member and a series manager.

(6) This chapter does not entitle a member of a series to remuneration for services performed for a member-managed series, except for reasonable compensation for services rendered in winding up the activities of the series.

48-3a-1206. Series distributions.

(1) Any distribution made by a series before its dissolution and winding up must be in equal shares among the series members and dissociated series members, except to the extent necessary to comply with any transfer effective under Section 48-3a-502 and any charging order in effect under Section 48-3a-503.

(2) A person has a right to a distribution before the dissolution and winding up of a series only if the series decides to make an interim distribution. A person's dissociation with respect to a series does not entitle the person to a distribution.

(3) A person does not have a right to demand or receive a distribution from a series in any form other than money. Except as otherwise provided in Subsection 48-3a-711(3), a series may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(4) If a series member or transferee becomes entitled to receive a distribution, the series member or transferee has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution. However, the series' obligation to make a distribution is subject to offset for any amounts owed to the series by the member or a person dissociated as a member on whose account the distribution is made.

(5) A series may not make a distribution if after the distribution:

(a) the series would not be able to pay its debts as they become due in the ordinary course of the series' activities; or

(b) the series' total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the series were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

(6) A series may base a determination that a distribution is not prohibited under Subsection (5) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(7) Except as otherwise provided in Subsection (9), the effect of a distribution under Subsection (5) is measured:

(a) in the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the series, as of the date money or other property is transferred or debt incurred by the series; or

(b) in all other cases, as of the date:

(i) the distribution is authorized, if the payment occurs within 120 days after that date; or

(ii) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.

(8) A series' indebtedness to a series member incurred by reason of a distribution made in accordance with this section is at parity with the series' indebtedness to its general, unsecured creditors.

(9) A series' indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of Subsection (5) if the terms of

the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members of the series under this section. If such indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(10) Except as otherwise provided in Subsection (11), if a member of a member-managed series or manager of a manager-managed series consents to a distribution made in violation of this section and in consenting to the distribution fails to comply with Section 48-3a-409, the member or manager is personally liable to the series for the amount of the distribution that exceeds the amount that could have been distributed without the violation of this section.

(11) To the extent the operating agreement of a member-managed series expressly relieves a series member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members of the series, the liability stated in Subsection (10) applies to the other members of the series and not the member of the series that the operating agreement relieves of authority and responsibility.

(12) A person that receives a distribution from a series knowing that the distribution to that person was made in violation of this section is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under this section.

(13) A person against which an action is commenced because the person is liable under Subsection (10) may:

(a) implead any other person that is liable under Subsection (10) and seek to compel contribution from the person; and

(b) implead any person that received a distribution in violation of Subsection (12) and seek to compel contribution from the person in the amount the person received in violation of Subsection (12).

(14) An action under this section is barred if not commenced within two years after the distribution.

Enacted by Chapter 412, 2013 General Session

48-3a-1207. Events causing dissociation from a series.

(1) Unless otherwise provided in the operating agreement, a member ceases to be associated with a series and to have the power to exercise a right or power of a member with respect to the series upon the assignment of all of the member's transferable interest in the limited liability company with respect to the series.

(2) Unless otherwise provided in an operating agreement, an event under this chapter or the operating agreement that causes a member to cease to be associated with a series does not, by itself:

(a) cause the member to cease to be associated with another series;

(b) terminate the continued membership of a member in the limited liability company; or

(c) cause the termination of the series, regardless of whether the member is the last remaining member associated with the series.

Enacted by Chapter 412, 2013 General Session

48-3a-1208. Dissolution of a series.

(1) Except to the extent otherwise provided in the operating agreement, a series may be dissolved and its affairs wound up without causing the dissolution of the limited liability company.

(2) The dissolution of a series does not affect the limitation on liabilities of the series under Section 48-3a-1201.

(3) A series is dissolved and its affairs shall be wound up upon the dissolution of the limited liability company under Section 48-3a-701 or upon the occurrence of any of the events described in Section 48-3a-701, as applied to the series.

(4) Notwithstanding Section 48-3a-703, unless otherwise provided in the operating agreement, any of the following persons may wind up the affairs of a dissolved series:

(a) a manager associated with a series who has not wrongfully caused the dissolution of the series;

(b) if there is no manager that satisfies the requirements of Subsection (4)(a), the members associated with the series who have not wrongfully caused the dissolution of the series or a person approved by the members associated with the series who have not wrongfully caused the dissolution of the series; or

(c) if there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who have not wrongfully caused the dissolution of the series, and either:

(i) own more than 50% of the transferable interests of the series owned by members associated with the series who have not wrongfully caused the dissolution of the series; or

(ii) own more than 50% of the transferable interests of each class or group associated with the series owned by members associated with the series who have not wrongfully caused the dissolution of the series.

(5) The persons winding up the affairs of a series, in the name of the series and for and on behalf of the series, may take all actions with respect to the series as are permitted under Section 48-3a-703 for a limited liability company. The persons winding up the affairs of a series shall provide for the claims and obligations of the series as provided in Section 48-3a-711 for a limited liability company and distribute the assets of the series as provided in Section 48-3a-711 for a limited liability company. An action taken pursuant to this Subsection (5) may not affect the liability of a member and may not impose liability on a liquidating trustee.

Enacted by Chapter 412, 2013 General Session

48-3a-1209. Foreign limited liability company -- Series.

A foreign limited liability company that is registered to do business in this state that is governed by an operating agreement that establishes or provides for the establishment of a series of transferable interests having separate rights, powers, or

duties with respect to specified property or obligations of the foreign limited liability company, or profits and losses associated with the specified property or obligations, shall indicate that fact on the foreign registration statement filed by the division. In addition, the foreign limited liability company shall state on the foreign registration statement whether the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series, if any, are enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series. Notice in a foreign limited liability company's foreign registration statement of the limitation on liability of a series as referenced in this section shall have the same effect found in Section 48-3a-1202 as a notice of limitation on liability of a series set forth in a limited liability company's certificate of organization.

Enacted by Chapter 412, 2013 General Session

48-3a-1301. Application of this part.

If a conflict arises between this part and another provision of this chapter, this part controls.

Enacted by Chapter 412, 2013 General Session

48-3a-1302. Requirements.

(1) To be a low-profit limited liability company, a limited liability company shall:
(a) contain in its name the abbreviation "L3C" or "l3c";
(b) state in its certificate of organization that it is a low-profit limited liability company;

(c) organize under this chapter; and
(d) be organized for a business purpose that satisfies, and at all times operates to satisfy each of the requirements under Subsection (2).

(2) A low-profit limited liability company:

(a) shall significantly further the accomplishment of one or more charitable or educational purposes within the meaning of Section 170(c)(2)(B), Internal Revenue Code;

(b) shall demonstrate that it would not be formed but for the limited liability company's relationship to the accomplishment of a charitable or educational purpose;

(c) subject to Subsection (3), may not have as a significant purpose the production of income or the appreciation of property; and

(d) may not have as a purpose to accomplish one or more political or legislative purposes within the meaning of Section 170(c)(2)(D), Internal Revenue Code.

(3) Notwithstanding Subsection (2), if a low-profit limited liability company produces significant income or capital appreciation, in the absence of other factors, the fact that the low-profit limited liability company produces significant income or capital appreciation is not conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

Enacted by Chapter 412, 2013 General Session

48-3a-1303. Ceasing to be a low-profit limited liability company.

(1) If a limited liability company that is a low-profit limited liability company at its formation at any time ceases to meet a requirement to be a low-profit limited liability company under Section 48-3a-1302, the limited liability company:

(a) ceases to be a low-profit limited liability company on the day on which the limited liability company no longer meets the requirement; and

(b) if it continues to meet the requirements of this chapter to be a limited liability company, continues to exist as a limited liability company that is not a low-profit limited liability company.

(2) A low-profit limited liability company's failure to meet a requirement of Section 48-3a-1302 may be:

(a) voluntary, in order to convert to a limited liability company that is not a low-profit limited liability company; or

(b) involuntary.

(3) If a low-profit limited liability company ceases to be a low-profit limited liability company in accordance with this section, the limited liability company shall:

(a) change its name to conform with Section 48-3a-108; and

(b) amend its certificate of organization in accordance with Section 48-3a-202.

Enacted by Chapter 412, 2013 General Session

48-3a-1304. Merger, interest exchange, conversion, or domestication of a low-profit limited liability company.

A low-profit limited liability company may engage in a merger, interest exchange, conversion, or domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, to the same extent as a limited liability company that is not a low-profit limited liability company.

Enacted by Chapter 412, 2013 General Session

48-3a-1401. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the uniform act upon which this chapter is based.

Enacted by Chapter 412, 2013 General Session

48-3a-1402. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Enacted by Chapter 412, 2013 General Session

48-3a-1403. Relation to Electronic Signatures in Global and National

Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Enacted by Chapter 412, 2013 General Session

48-3a-1404. Savings clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

Enacted by Chapter 412, 2013 General Session

48-3a-1405. Application to existing relationships.

- (1) Before January 1, 2016, this chapter governs only:
 - (a) a limited liability company formed on or after January 1, 2014; and
 - (b) except as otherwise provided in Subsection (3), a limited liability company formed before January 1, 2014, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this chapter.
- (2) Except as otherwise provided in Subsection (3), on and after January 1, 2016, this chapter governs all limited liability companies.
- (3) For the purposes of applying this chapter to a limited liability company formed before January 1, 2014:
 - (a) the limited liability company's articles of organization are deemed to be the limited liability company's certificate of organization;
 - (b) for the purposes of applying Subsection 48-3a-102(15) and subject to Subsection 48-3a-114(4), language in the limited liability company's articles of organization designating the limited liability company's management structure operates as if that language were in the operating agreement; and
 - (c) the limited liability company has perpetual duration unless otherwise stated in the limited liability company's articles of organization.

Enacted by Chapter 412, 2013 General Session